

TENTATIVE AGENDA  
STATE WATER CONTROL BOARD MEETING  
MONDAY, OCTOBER 26, 2009  
AND  
TUESDAY, OCTOBER 27, 2009 (if necessary)

House Room C  
General Assembly Building  
9<sup>th</sup> & Broad Streets  
Richmond, Virginia

Convene – 9:30 a.m. (Both Days)

<b>I.</b>	<b>Minutes</b> (July 23, 2009)		<b>TAB</b> A
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<b>III.</b>	<b>Final Regulations</b>		
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	Large-Scale Agriculture Operations on the Eastern Shore	Davenport	J
<b>VI.</b>	<b>Significant Noncompliance Report</b>	O'Connell	K
<b>VII.</b>	<b>Consent Special Orders (VPDES Permit Program)</b>	O'Connell	L
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	Town of Appomattox (Appomattox Co.)		
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	Standex Engraving LLC (Henrico Co.)		
	Tyson Foods, Inc. d/b/a Tyson Foods, Inc. (Hanover Co.)		
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<b>VIII.</b>	<b>Consent Special Orders (VWP Permit Program)</b>	O'Connell	M
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 Northern Regional Office  
 NVP, Inc. for Ewell's Mill Development Project (Prince William Co.)  
 Piedmont Regional Office  
 Mountain Run Golf, Inc. & Mountain Run, LLC (Hanover Co.)  
 Tidewater Regional Office  
 Centerville II, LLC (Chesapeake)  
 West Neck Properties, Inc. (Virginia Beach)

<b>IX.</b>	<b>Consent Special Orders (Others)</b>	O'Connell	N
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	Donnie C. Campbell, Sr. (Nelson Co.)		
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<b>X.</b>	<b>Consent Special Orders (Oil)</b>	O'Connell	O
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	Bay Bridge Enterprises, LLC (Chesapeake)		

**XI. Public Forum**

<b>XII.</b>	<b>Other Business</b>	Gills	P
	Revolving Loan Fund - Proposed Funding List	Gilinsky	
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**ADJOURN**

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

**PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For **REGULATORY ACTIONS** (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to

those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a **FORMAL HEARING** is being held.

**POOLING MINUTES:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: cindy.berndt@deq.virginia.gov.

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## **Permits**

### **Middlesex Courthouse WWTP (Middlesex Co.)**

*Summary of Comments Received During Public Hearing/Comment Period - VPDES Permit No. VA0091316, Middlesex Courthouse WWTP, Middlesex County.*

PURPOSE: To request that the State Water Control Board make a decision to re-issue, modify, or deny the VPDES discharge permit for the Middlesex Courthouse (VA0091316).

On June 6, 2008, DEQ received an application from Middlesex County for re-issuance of VPDES permit number VA0091316 for the Middlesex Courthouse Wastewater Treatment Plant (WWTP). This permit was originally issued for the first time on December 11, 2003 and expired on December 10, 2008. During the original 2003 issuance process, notification was made to 18 riparian land owners downstream of the project, and no public comments were received during the public notice phase of the original permit. The 2003 permit authorized the permittee to discharge treated municipal wastewater from a treatment facility with a design capacity of 39,900 gallons per day (gpd) into an unnamed tributary of Urbanna Creek, in the Rappahannock River basin. At the outfall point, the receiving water body is a free-flowing intermittent stream. The outfall location is 0.85 miles upstream of the unnamed tributary's confluence with tidal Urbanna Creek; however, 0.1 mile downstream of the outfall point, ambient stream flows within the channel disappear into a swallow hole. A Certificate to Construct (CTC) the facility was issued in December 2003 and on August 29, 2005, but as of today, the treatment facility has not been built. The proposed treatment facility will serve Middlesex County's recently built Courthouse complex, the County's High School, and an undetermined number of local businesses in the Saluda area. Since 2003, sewerage generated at the Courthouse complex has been handled through a pump-and-haul arrangement. The High School is currently served by a failing drain field located on its athletic fields. The application for re-issuance of this VPDES discharge permit requested that the current permitted design capacity of 39,900 gallons per day be carried forward to the re-issued permit cycle. A notable difference between the application for the 2003 permit and the application for the 2008 re-issuance is that the location of the proposed treatment plant was changed by the permittee due to the purchase of a larger lot to build the treatment works. The new location is east of Saluda, off State Route 33. However, the County plans to pump the treated wastewater approximately 0.8 mile back to the proposed 2003 outfall site (off SR 618) in Saluda to avoid shellfish issues. Consequently, the outfall location will remain the same as the current permit. The proposed draft permit for re-issuance contains most of the same limitations and conditions of the existing permit, with minor exceptions added or removed to address new agency requirements and procedures promulgated since the initial issuance of this permit. These include additional significant digits requirements, additional bacterial limitations and monitoring requirements, additional compliance reporting requirements, and the removal of total residual chlorine limits and monitoring due to the planned design change from chlorination/de-chlorination to ultraviolet disinfection methods. Although the Water Quality Standards require that only E.coli bacteria be limited for discharges to freshwater streams, a limitation for Fecal Coliform was carried over to the draft permit re-issuance from the existing permit to account for any effluent that may reach Urbanna Creek (shellfish waters). The Middlesex Courthouse treatment facility is not currently considered to be a significant discharger under the Code of Virginia § 62.1-44.19:19:14.C.5, and consequently is not subject to coverage under the *General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia* (9 VAC 25-820). If in the future the County requests and receives approval of an expansion of the facility to or above 40,000 GPD, the County will be required to formally register for General Permit coverage. The facility was issued a CTC in December 2003, and therefore, if the facility expands, may be granted a "permitted design capacity" load equivalent to 18.7

mg/L Total Nitrogen and 2.5 mg/L Total Phosphorus times the current design capacity volume. The proposed outfall point is not directly in designated shellfish waters. Nonetheless, DEQ staff coordinated with the Virginia Department of Health, Division of Shellfish Sanitation in preparing the proposed permit. Downstream, in the tidal portion of Urbanna Creek, the VDH has identified areas of both condemned and prohibited shellfish growing waters. On July 2, 2008, VDH responded that the proposed permit would not cause an increase in the size or type of currently designated restricted shellfish growing areas, and offered no further comments on the proposed permit. Effluent limits were developed to maintain water quality criteria under “critical” low flow drought conditions. Due to the intermittent nature of the receiving stream, the discharge was evaluated without the benefit of dilution. Consequently, the proposed permit limits reflect the need for the treated effluent to maintain water quality standards by itself, or at the “end-of-pipe.” The draft permit proposes to limit the following parameters:

<u>Carbonaceous Biological Oxygen Demand (cBOD<sub>5</sub>)</u>	<u>10 mg/l (1500 g/day) monthly average</u>
<u>Total Suspended Solids (TSS)</u>	<u>10 mg/l (1500 g/day) monthly average</u>
<u>Total Kjeldahl Nitrogen (TKN)</u>	<u>3.0 mg/l (450 g/day) monthly average</u>
<u>Dissolved Oxygen</u>	<u>5.0 mg/l minimum</u>
<u>E.coli bacteria</u>	<u>126 N/100 mL monthly geometric mean</u>
<u>Fecal Coliform bacteria</u>	<u>200 N/100 mL monthly average, and</u>
<u>pH</u>	<u>6.0 S.U. min. and 9.0 S.U. max.</u>

The draft permit was public noticed in the *Southside Sentinel* on 9/11/2008 and on 9/18/2008. A total of 179 comments were received by email, fax, written letter, or form letter during the 30-day public comment period. Of these comments, 147 requested a public hearing, and were submitted in full compliance with the information requirements outlined in 9VAC 25-230-40 of Procedural Rule No. 1. Based on the comments received, DEQ concluded there was significant public interest, and substantial, disputed issues relevant to the re-issuance of VPDES permit VA0091316. The DEQ Chief Deputy Director concurred, and approved the holding of a public hearing on November 3, 2008. Members of the State Water Control Board were notified, and no comments were received requesting a meeting of the Board to review the Director’s decision to grant a hearing or to delegate the permit to the Director for his decision. Consequently, the Department proceeded with scheduling this hearing and notifying interested parties. Public notice of this hearing was published in the December 18 and December 25, 2008 editions of the *Southside Sentinel* newspaper. The comment period closed at 4:00 p.m. on February 6, 2009. A Public Hearing was held at the Saint Clare Walker Middle School in Locust Hill, VA in Middlesex County on January 21, 2009 at 7:00 pm. Mr. Robert Wayland served as the Hearing Officer, and DEQ staff present included Richard Weeks, Kyle Winter, Curt Linderman, Jeremy Kazio, Jaime Bauer, and Emilee Carpenter. Public attendance included 105 citizens, of whom 17 presented oral comments opposing the proposed permit re-issuance. Approximately 33 letters and emails were received during the comment period between December 18, 2008 and February 6, 2009. A formal decision regarding the re-issuance, modification, or denial of the proposed Middlesex Courthouse permit was scheduled to be made by the State Water Control Board at their April 27, 2009 scheduled meeting. On April 23, 2009, the permittee made a request of DEQ to remove this item from the SWCB Meeting Agenda in order to postpone the decision until the next SWCB Meeting. This request was made by the permittee in lieu of new information regarding a potential land application study to be conducted by the Hampton Roads Sanitation District (HRSD) focusing on the land application of treated wastewater effluent from the proposed Middlesex Courthouse and existing Urbanna Wastewater Treatment Facilities. Subsequently, the item was removed and public commenters were notified via staff communications and various media outlets. HRSD proceeded with contracting with an outside consulting firm to conduct the land application study. The study was completed to a draft phase for County review, but was not finalized prior to the scheduled July meeting of the State Water Control Board.

On July 8, 2009 DEQ received a petition from Roger S. Martin for the SWCB to delay its decision on this case, and requesting the public comment period be re-opened. Mr. Martin’s request was premised on new information that was not available during the public hearing comment period, including completion of the HRSD land application study. On July 9, 2009, DEQ staff responded to Mr. Martin’s petition by indicating DEQ could not unilaterally comply with his request because the State Water Control Law

requires the SWCB to give the applicant a case decision within 90 days of the close of the public hearing comment period, unless the applicant agrees to a delay. In a letter dated July 20, 2009, the permittee requested that the formal decision by the State Water Control Board to re-issue/modify/deny the subject permit at their July 23, 2009 quarterly meeting be deferred until the next meeting. This request was made due to the release of HRSD's draft land application feasibility study to the permittee. Subsequently, the item was removed and public commenters were notified via staff communications and various media outlets.

On August 7, 2009, DEQ's Piedmont Regional Office received a published version of HRSD's "Middle Peninsula Effluent Land Application Feasibility Study" dated July 2009 and prepared by HDR Engineering, Inc. The study concluded that "...capital and [Operations & Maintenance] O&M costs of land application will be substantial, making effluent land application a challenging stand-alone project from an economic perspective." HRSD recommended that a detailed site evaluation to fully evaluate potential sites, and to more accurately identify suitable soils and conditions be undertaken. The County has not commented to DEQ on the study to warrant a change in the DEQ staff analysis or legal basis of the proposed VPDES permit.

Summary of Comments Received at the January 21, 2009 Public Hearing for the Proposed Middlesex Courthouse Wastewater Treatment Plant Permit Reissuance (VA0091316) and in written form between December 18, 2008 and February 6, 2009

1) Issue: Should other alternatives to the point source discharge of wastewater at the proposed outfall location be evaluated/pursued?

Comment: The permittee should be forced by the State to withdraw their application to discharge and instead apply for a treatment system which utilizes applying wastewater to land. Although the proposed permit does not incorporate nutrient limits, there is sufficient evidence that the permittee plans to expand, which will require that nutrient limits be applied to the facility. Nutrient removal technology is ungainly and expensive, and cannot be afforded by the permittee. Land application is a better alternative because the nutrients can be used on agricultural fields in the area, which will help support the local economy and prevent pollution of local waterways.

Commenters: Marian Agnew, Mike Floyd, Dan Gill, Robert Calves

Comment: Generally, Virginia's state government operates with too narrow of a focus and not enough practicality. Specifically, the State should require that all localities take a regional approach to wastewater disposal, and that long term plans be required instead of allowing multiple small wastewater treatment plants to be constructed within relatively diminutive areas.

Commenters: Roger Martin, Robert Calves

Comment: The DEQ should be required to ask for the Hampton Roads Sanitation District's input on the proposed wastewater treatment facility because they are a "government entity" which specializes in municipal wastewater disposal.

Commenters: Sean Kemple

Comment: The Middlesex County government (the permittee) has not considered a long term solution to the existing or future sewage disposal needs of the county. Construction of the proposed plant will serve very few people, and will not promote growth within the county, and it will cause the county government to delay it's obligation to address the rest of the county's sewage needs.

Commenters: Stan Coloff, Urbanna Town Council/Janet Smith, Peter Mansfield, H.Deiter & Mary E. Hoinkes, Ingrid Roper, James Knupp

Comment: The County's sewage should be piped to the HRSD-owned York River WWTP via the proposed pipeline that will serve Mathews, VA. This will prevent the pollution of Urbanna Creek and promote the cleanup of the Chesapeake Bay.

Commenters: Urbanna Town Council/Janet Smith, Sean Kemple, H.Deiter & Mary E. Hoinkes, Stan Coloff

Comment: In general, there are other alternatives that exist which will channel wastewater out of Middlesex County. These should be considered.

Commenters: Urbanna Town Council/Janet Smith, Don Richwine, Helen & Roger Hopper, Elizabeth Pritchard, Kerry Robusto, Robert Montague, Margaret Gerdts, James Knupp, James Pitts

Comment: The wastewater from the proposed facility should be piped to the Rappahannock River instead of Urbanna Creek. The Rappahannock River provides more dilution and is tidally flushed.

Commenters: James Pitts

Comment: The discharge from the proposed wastewater treatment plant should be directed to Dragon Run (headwaters of the Piankatank River) instead.

Commenters: Aubrey Hall

Comment: The Middlesex County government (permittee) has claimed that they are being forced to halt their current pump and haul method for disposal of sewage from the new courthouse complex. Some citizens have questioned whether this is true, and state that the County government should continue pumping and hauling because it is cheaper.

Commenters: Sean Kemple, Peter Mansfield, H.Deiter & Mary E. Hoinkes

Comment: Demographically, there's nothing within the county that warrants the construction of a wastewater treatment plant in the Saluda area. The existing private subsurface sewage disposal systems are adequately addressing citizens' sewage needs. In addition, the proposed wastewater treatment plant does not address issues regarding sewage disposal in other areas of the county which are in need of it, such as Hartfield and Deltaville.

Commenters: Urbanna Town Council/Janet Smith, Sara Chaves Beam, James Knupp, Peter Mansfield

Comment: Middlesex County's own comprehensive plan states that all measures will be taken to discourage the construction of any source of discharge to waters within the county. The proposed treatment plant does not follow this part of the plan.

Commenters: Roger Martin

Comment: The Middlesex County government (permittee) should be required by DEQ to request to be part of HRSD's "Regional Plan" for addressing sewage. This plan's goal is to incorporate the sewage disposal needs of multiple small localities into fewer large wastewater treatment facilities.

Commenters: Sean Kemple,

Comment: The Virginia State Government has an obligation to encourage cost effective and sustainable approaches to wastewater treatment, rather than promoting costly treatment practices that are "Neanderthal" and "self serving".

Commenters: Dan Gill

Comment: Royster Malcolm Pirnie, the engineering consultant to Middlesex County (the permittee), disagreed with verbal comments made at the public hearing. The disagreement was in regard to the statement made by a representative of the Urbanna Town Council that the consultant was instructed by the Board of Supervisors to place the discharge from the proposed wastewater treatment facility into Urbanna Creek. The consultant stated that the Board of Supervisors never instructed them where to place the outfall; rather, they instructed them to look at all alternatives that were available for discharge of the effluent. In a 1995 study of wastewater alternatives for the Saluda Area, the consultant stated, "In the Saluda area the closest water way suitable for discharge of treated effluent from a wastewater plant is Urbanna Creek." Following through on the County's requirements, the consultant investigated a discharge to both Dragon Run and the Rappahannock River, and was advised by DEQ that a discharge permit would

not likely be granted for either one of these tributaries. Land application was investigated in the aforementioned 1995 report as an alternative, but proved to be not economically feasible. The consultant met with HRSD on several occasions to try and pump the wastewater to their Mathews Courthouse force main. This alternative, also, proved to be not economically feasible. The consultant studied “re-use” as an alternative and, as a result, designed the plant to meet the “re-use” effluent requirements. The consultant submitted that the Urbanna Town Council was misinformed concerning the facts surrounding the alternatives analyzed for the discharge point of the plant.

Commenters: Roger O. Hart, P.E., Royster Malcolm Pirnie

*Staff Response: The Department of Environmental Quality does not have the authority to require specific wastewater treatment alternatives to an applicant or permittee. It is DEQ’s obligation to evaluate permit applications it receives to determine the impact to State waters in accordance with the Water Quality Standards, and to assign effluent limitations to a facility in order to maintain these Standards. Nevertheless, the permittee has indicated that the design of the proposed treatment facility will incorporate the ability to meet Level 1 water quality requirements defined in 9 VAC 25-740-90 (Water Reclamation and Reuse Regulation) should a future customer emerge seeking beneficial use of reclaimed wastewater. Also, the permittee has considered other discharge locations such as the Rappahannock River and Dragon Run Swamp, but these alternatives would cause a change in shellfish closure areas by the VDH Department of Shellfish Sanitation that may render them ineligible for VPDES coverage. The permittee has also considered joining into the proposed sewage line that will serve the Mathews area, which will be directed to the HRSD York River WWTP. It was determined, through a study conducted by HRSD and paid for by the permittee, that the construction of a sewage trunk line of this length would not be as cost effective (upwards of 3-4 times more) as building a wastewater treatment facility within the county.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

2) Issue: Does the proposed permit adequately address and protect Urbanna Creek Water Quality / Beneficial Uses / Nutrient Pollution?

Comment: The water in Urbanna Creek is stagnant, especially in the upper portions of the creek below the proposed discharge location. The proposed effluent would not be flushed out of the creek by tidal flux, and will become concentrated to a point that it inhibits the creek’s current recreational uses.

Commenters: John Amos, Mrs. Marshall, Richard Marshall, Margaret Gerdt, Ingrid Roper, Robert Calves, Kerry Robusto, George Guhse, James Knupp

*Staff Response: It has previously been recognized that Urbanna Creek has modest tidal flushing capability or dilution capacity in water models conducted for the Urbanna Wastewater Treatment Plant. However, the proposed facility will discharge to an intermittent stream greater than 0.8 miles from its confluence with Urbanna Creek. The effluent from the proposed facility is required to meet current Water Quality Standards at the “end of pipe” due to the lack of any dilution by the intermittent stream. It is not expected that the proposed discharge will reach Urbanna Creek under permitted design drought flow conditions. However, (due to the presence of storm water runoff or other base flows), the resulting mixed water quality would contain a more dilute pollutant load that would be expected to further reinforce the ability to meet or enhance Water Quality Standard criterion.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: Section §62.1-44.2 of the Code of Virginia requires that the State take measures to prevent any increase in the pollution of State waterways, and to reduce existing pollution within its waterways. The proposed wastewater treatment plant will add pollution to Urbanna Creek, which has existing VDH/DSS condemnations on shellfish harvesting from the creek.

Commenters: Roger Martin



Staff Response: The draft permit has been developed to require that the effluent from the facility meet Water Quality Standards before reaching State Waters. Therefore, the proposed facility is not expected to cause or contribute to an impairment of State waterways. During the proposed permit re-issuance's development, the VDH/DSS was contacted to determine if the proposed discharge would have an impact on the existing shellfish closure for Urbanna Creek. VDH/DSS responded stating that it would not increase the size or type of closure, and that they had no comments on the proposed permit reissuance.

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: The fresh water from the proposed facility's effluent will cause salinity levels in Urbanna Creek to lower, which may disrupt the ecosystem for aquatic life living there.

Commenters: Clyde Roper

Staff Response: It is not expected that the proposed discharge at the proposed design capacity will cause salinity levels within Urbanna Creek to decrease. The Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination, Urbanna Creek (February 2005) was developed to address fecal coliform bacteria within a portion of Urbanna Creek. This TMDL focused on roughly half of the creek and used a "tidal prism" model to approximate the volume within that half of the creek based on area and field depth readings. It was calculated that this portion of the creek contained approximately 113,741,900 gallons of water that is exchanged every 0.7 days. If this volume is doubled to approximate the remaining half of the creek that was not modeled, it would place the volume of the creek at 227,483,800 gallons of water exchanged approximately every 0.7 days. Although the effluent from the proposed facility is not expected to reach Urbanna Creek, if it were assumed that the plant operated at design capacity and 100% of the effluent reached Urbanna Creek, this would mean that the effluent would constitute <0.02% of the creek's volume between tidal flux. This calculated ratio is an overly conservative hypothetical assumption, and is not expected to cause substantial changes to Urbanna Creek's salinity levels.

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: There is a very general concern regarding nutrient loading and particulate matter levels within Urbanna Creek. It has been observed during the summer that Urbanna Creek is very cloudy and green colored, which many people attribute to algal growth. Nutrient loads will cause further algal growth.

Commenters: Urbanna Town Council/Janet Smith, Mike Floyd, James Knupp, Clyde Roper, Phil Mullins, Stan Coloff, George Guhse

Comment: The government is not doing enough to clean up the Chesapeake Bay, which is why the Chesapeake Bay Foundation and the Waterman's Association is suing EPA for not cleaning up the Bay by the agency's goal of 2010. Allowing the proposed discharge would only prove this point further.

Commenters: Alana Courtney

Staff Response: The proposed treatment plant will be designed to meet the nutrient removal standards for an "existing discharger" that is not considered a significant discharger under §62.1-44.19:14.C.5 (Code of Virginia) and 9 VAC 820-10 (Chesapeake Bay Watershed General Permit Regulation). In addition, Total Kjeldahl Nitrogen is limited to a concentration of 3.0 mg/L monthly average in the draft permit re-issuance.

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: Urbanna Creek has been declared a “dead creek”. Instead of adding further pollution, it should be cleaned up.

Commenters: Alana Courtney, Robert Straw, Robin Starbird, Roger Martin

Comment: If the proposed treatment plant is built, a plan for growing oysters within Urbanna Creek to help in reducing or eliminating pollution cannot be implemented because the Department of Shellfish Sanitation will condemn the creek for shellfish harvest for an indefinite period of time.

Commenters: Phil Mullins

Comment: The Department of Shellfish condemnation of the creek will not be lifted if the proposed wastewater treatment plant begins discharging. The discharge may also expand the current condemnation of shellfish harvest within the creek.

Commenters: Urbanna Town Council/Janet Smith, John Zuegner, Margaret Gerds, Roger Martin, Phil Mullins

Staff Response: *Commenters made reference to Urbanna Creek being declared a “dead” creek because a portion of it is restricted for shellfish harvest due to the VDH/DSS condemned designation. This does not mean that Urbanna Creek is “dead”, but only that a portion of the creek has the potential to contain high enough concentrations of fecal coliform that harvesting shellfish from the creek with intent to consume them could cause illness due to filter-feeding by the shellfish. This does not mean that the shellfish are harmed by these high bacterial levels, nor does it mean that any other natural life within or around Urbanna Creek is affected.*

*Shellfish harvesting is prohibited in portions of Urbanna Creek due to the presence of the HRSD-owned Urbanna Wastewater Treatment Plant and the discharge from the Middle Peninsula Regional Security Center Wastewater Treatment Facility. VDH/DSS has certified that the proposed discharge will not adversely affect shellfish use. While not required, the proposed permit includes a fecal coliform bacteria effluent limit to provide further reliable protection of shellfish. The permit will not cause or contribute to the impairment of Urbanna Creek.*

*The VDH/DSS cannot lift a shellfish closure, as a safety precaution, when there is a known point source discharge directly to tidal waters that has the potential to contribute fecal coliform to a water body, such as a municipal sewage treatment plant like the HRSD-Urbanna Wastewater Treatment Facility. The proposed Middlesex Courthouse WWTP will not be a direct discharge to tidal waters and has been certified by VDH/DSS to not adversely affect shellfish use. This closure does not prevent citizens from growing oysters in order to clean up the creek; however, it does prevent the consumption or sale of those oysters and other shellfish.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: The cumulative impact of the proposed discharge and existing discharges on Urbanna Creek should be studied. Also, there should be a better characterization of the intermittent stream to which the proposed treatment facility will discharge.

Commenters: Sara Chaves Beam, H.Deiter & Mary E. Hoinkes, Stan Coloff

Comment: The existing wildlife in Urbanna Creek will disappear if the proposed treatment facility is allowed to discharge.

Commenters: Bernice Chewning, Francis Hall, Kerry Robusto

Comment: Urbanna Creek provides swimming and recreational opportunities which will be eliminated if the proposed wastewater treatment plant is allowed to discharge.

Commenters: Roger Martin, Richard Marshall, Francis Hall, Betty Coulson

Comment: There is insufficient evidence indicating that the proposed wastewater treatment plant will not have a comprehensive impact on Urbanna Creek's wildlife or recreational uses.

Commenters: Roger Martin, Sara Chaves Beam,

Comment: Sub-aquatic vegetation is low, and turbidity, heavy algae, suspended solids, and siltation are currently severe problems within Urbanna Creek. There have been no assurances made that the proposed discharge will not collapse Urbanna Creek's remaining ecosystem.

Commenters: John Zuegner

Staff Response: *As stated above, the Water Quality Standards define what is needed to maintain ambient water quality for fish and wildlife habitat, and primary and secondary contact recreational uses. The receiving stream has been characterized as both intermittent and, due to the downstream swallow hole, unmodelable, and therefore cannot be characterized further by DEQ water modeling methods. In these cases, the most conservative approach is taken and very stringent conventional pollutant limitations are assigned. Effluent limitation calculations are not given the benefit of dilution, and therefore are limited to meet Water Quality Standards prior to discharge.*

*Further characterization of the stream is not warranted, as "end-of-pipe" effluent limits represent the most conservative permitting approach. By the time the effluent travels the >0.8 mile distance to Urbanna Creek, it will have been treated further by natural attenuation and will meet the requirements determined by the Water Quality Standards for maintaining current wildlife and human uses.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: Urbanna Creek is recognized statewide as a historical and recreational water body. Treated wastewater should not be allowed to discharge to a historical creek.

Commenters: Urbanna Town Council/Janet Smith, Roger Martin

Staff Response: *Only the designation of Urbanna Creek as a Tier III would prohibit point source discharges. The water body will be protected for its current natural and human resources by compliance with the Water Quality Standards, which will be achieved by compliance with the proposed permit re-issuance.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.*

Comment: Independent testing for fecal coliform in Urbanna Creek has revealed "smoking hot" levels due to the existing two wastewater treatment plant discharges as well as dumping from boats within the creek. Extensive aquaculture activities outside of Urbanna Creek will most likely be affected by the proposed discharge because of additional bacteria and nutrients introduced to and carried by Urbanna Creek to the Rappahannock River.

Commenters: Sarah Chaves Beam

Staff Response: *During the draft permit re-issuance's development, the VDH Department of Shellfish Sanitation was contacted in order to determine if, by their modeling methods, the proposed discharge would have any affect on the existing shellfish condemnation, or would cause further condemnations or closures downstream. The VDH/DSS responded that they did not object to the permit's re-issuance and that it would not cause an increase in size or type of shellfish condemnation. A TMDL for Urbanna Creek addressing fecal coliform bacteria levels was conducted in 2004-2005. It was determined that sources of fecal coliform consisted of the following percentages listed below:*

Livestock	17%
Wildlife	36%
Human	23%
Pets	24%
Point Sources	<<1%

*The category of “Human” sources has been noted in the TMDL as being from failed septic systems and from boating activity. As stated above, the VDH/DSS has determined that any aquaculture activities located downstream of the proposed discharge will not be affected.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: Non-point sources are contributing to a large portion of the pollution problems of Urbanna Creek. The proposed wastewater treatment plant will promote growth within in the county and cause further non-point source pollution due to housing construction. The discharge should not be allowed, and in addition, a plan should be implemented to reduce the impacts of population growth that includes stipulations to: a) enforce better land use practices, b) adopt new DCR sedimentation control and storm water regulations, c) encourage better agricultural practices, and d) educate citizens of what they can do to reduce or eliminate pollution to Urbanna Creek.

Commenters: John Zuegner,

Staff Response: Land use and zoning issues are the prerogative of local, rather than State, government and therefore are not within our authority to use as a basis to re-issue, modify, or deny the proposed permit.

*DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.*

Comment: The modeling effort conducted on the receiving stream for the proposed wastewater treatment plant only addresses the actual receiving stream, not the water bodies to which the receiving stream flows, like Urbanna Creek. The model assumes that the noted “swallow hole” will prevent the discharge from reaching Urbanna Creek, and does not evaluate the impact of the effluent on Urbanna Creek once it has traveled via subsurface conductance and leached into Urbanna Creek. Also, no evaluation has been conducted on the impact that the proposed discharge will have on the brown algae noted in stream model.

Commenters: Clifford Randall, Stan Coloff

Staff Response: DEQ staff performed a field site visit of the receiving waters in May 2003 to determine the viability of using established DEQ mathematical water quality modeling tools. During their site visit investigation, DEQ staff observed the accumulation of brown filamentous algae along the bottom of the stream channel (as compared to green algae floating along the top). The brown algae are believed to be a diatom population, which are commonly found in stream with sandy bottoms, small flows, and good water quality. Diatoms are general indicators where there is not an excessive nutrient problem. DEQ staff also observed that stream flow (about 1.5 feet wide and approximately 1-inch deep at the time of the site visit) completely disappeared into a hole on the west side of the channel bank, approximately 500 downstream of the proposed outfall point. A subsequent field visit conducted in April 2009 indicated that the stream is intermittent, but does not “disappear” into a swallow hole. Rather, it subsides and reemerges several times before forming an incised channel approximately 0.4 miles downstream. DEQ “desktop” surface water quality modeling tools are not designed to analyze sub-surface and/or intermittent stream flows. In situations where standard DEQ models are not applicable due to complex or site-specific situations, long-established DEQ protocols provide for effluent limitations to be established based on conservative, best professional judgment. 1987 DEQ guidance establishes  $cBOD_5=10$  mg/L,  $TSS=10$ mg/L, and  $TKN=3$  mg/L to be representative of “self sustaining” effluent limits, or those capable of maintaining the Water Quality Standards if the stream were to consist of 100% effluent. These effluent limitations have been incorporated into the proposed permit. Effluent that achieves Water Quality Standards prior to entering the “swallow hole” should benefit from further biological treatment as it travels via subsurface conductance. It can only be assumed that the exchange capacity caused by subsurface travel will enable pollutant levels to be further reduced before reaching Urbanna Creek. Further downstream analysis of effluent that is already required to achieve Water Quality Standards at “end-of-pipe” is not warranted.

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: This permit reissuance is prohibited by SWCB regulation 9 VAC 25-31-50 C.1 and CWA regulation 40 CFR 122.4(a) which states that a permit may not be issued if the conditions of the permit do not provide for compliance with the requirements of the CWA, or any regulations promulgated under the CWA. SWCB regulation 9 VAC 25-31-220 and CWA regulation 40 CFR 122.44 require that all permits include conditions necessary to achieve and maintain applicable WQS. The proposed wastewater treatment plant's discharge will eventually reach the Chesapeake Bay, and in 2004 the Commonwealth of Virginia established water quality standards for the designated uses of the tidal portions of the Rappahannock River and the Chesapeake Bay. The draft permit does not address these pollutants of concern, including total nitrogen or total phosphorus, and therefore violates SWCB regulation 9 VAC 25-31-220 and CWA regulation 40 CFR 122.44, and in doing so, violates 9 VAC 25-31-50 C.1 and 40 CFR 122.4(a).

Commenters: Chesapeake Bay Foundation/Joseph Tannery

Staff Response: *DEQ staff disagrees with the interpretation that the permit fails to address water quality standards for the tidal Rappahannock River and Chesapeake Bay and, therefore, violates 9 VAC 25-31-220 and 40 CFR 122.44. 9VAC 25-40-10 of the "Regulation for Nutrient Enriched Waters and Dischargers Within the Chesapeake Bay Watershed" regulation states, "The provision of this regulation [9VAC 25-40-10 et. seq.] and the Water Quality Management Planning Regulation (9VAC 25-720) constitute the nutrient reductions requirements for point source dischargers in the Chesapeake Bay Watershed to protect the Chesapeake Bay and its tidal rivers." The regulations establish no requirements to include total nitrogen or total phosphorus effluent limitations for municipal facilities within the Bay watershed with a design flow of less than 40,000 gallons per day. Consequently, the proposed permit is in full compliance with all applicable legislation and water quality regulations. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

3) Issue: Are the design flows reflected by the permittee accurate?

Comment: The Middlesex County government is not truthfully telling the public or DEQ what the real design capacity of the wastewater treatment plant will be.

Commenters: Urbanna Town Council/Janet Smith, Peter Mansfield, James Knupp

Comment: Once the wastewater treatment plant is built, the County will ask DEQ to expand and DEQ will not impose stricter limitations on the permittee because it would cause economic hardship. This will cause higher pollution of Urbanna Creek.

Commenters: Roger Martin, Peter Mansfield,

Comment: The Middlesex County government's (permittee's) consulting engineer has misled the public and DEQ as to the size and ultimate design capacity of the proposed wastewater treatment plant.

Commenters: Peter Mansfield, Sean Kemply

Comment: If the proposed treatment plant is built, and they decide to expand, there will be a period of time in which DEQ is developing the modified permit for the expansion. During that period, or any time the permit is reopened, the flow from the treatment plant will go unchecked and the permittee will be able to discharge freely without limits.

Commenters: Clyde Roper

Staff Response: *The application for the proposed permit re-issuance requested a design flow of 39,900 gallons per day, and is the same as the original 2003 permit issuance. The flow from the facility must be monitored on a daily basis and reported monthly to DEQ via DMR's (data monitoring reports). If the permittee discharges at a rate that is within 95% of the permitted design capacity for three consecutive months, the proposed permit requires the development and implementation of a plan to address the high influent flows (for example, controls to prevent infiltration/inflows, etc.) Exceedances of permitted*

*pollutant loads (resulting from the excessive flows) will be handled as permit violations. If it is determined that the permittee cannot reduce the discharge rate, a modification of the permit will be required for increasing the design flow, which will incorporate reevaluating effluent limitations to meet a larger design flow. Modification of the permit would require downstream riparian owner notification and an opportunity for public participation in response to publication of another public comment period. The design of a wastewater treatment plant must meet the requirements of DEQ's Sewage Collection and Treatment (SCAT) regulations (9VAC 25-790). These regulations include requirements pertaining to the sizing of treatment plant components to handle anticipated peak (as compared to average) effluent flows. These requirements are necessary to avoid overflow or treatment bypass conditions during peak events. The consulting engineer for Middlesex County has further enhanced the sizing and design of the treatment plant components to improve the performance and reliability of its operations. However, while the treatment plant may be capable of treating to higher peak flows, the proposed permit authorizes no greater than an average design flow of 39,900 gallons per day.*

*It has been made public by the permittee that the long-term plan for the proposed treatment facility will be to expand and potentially accept sewage currently being treated by antiquated and/or outdated treatment facilities within neighboring areas (Christchurch School, Urbanna WWTP, and the Regional Jail). At the time that the permittee plans to expand this facility, modifications will be made to the permit that will require compliance with all limitations, monitoring, and conditions mandated by any applicable legislation and/or regulations that exist at the time.*

*Any potential modification of a permit cannot be acted upon by the permittee until the permit modification is issued by DEQ. During the time that a permit is being modified, the permittee must comply with the existing permit. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

4) Issue: Should nutrient controls be added even though the design flow is less than the regulated threshold?

Comment: The permittee is utilizing a "loophole" within State regulations to avoid nutrient limitations by requesting a permit for a design flow of 39,900 gallons per day rather than 40,000 gallons per day. If the proposed discharge is allowed, nutrient limitations should be applied.

Commenters: John Zuegner, Peter Mansfield, H.Deiter & Mary E. Hoinkes, Stan Coloff, James Knupp

Comment: Nutrients added by the proposed wastewater treatment plant will only add to the two existing discharges on Urbanna Creek. One has a design flow under 40,000 gpd and the other is considered a significant discharger, but cannot meet its nutrient allocations. The one that is a significant discharger cannot meet the nutrient allocations given in the Chesapeake Bay Watershed Nutrient General Permit, and therefore purchases nutrient credits. So essentially, there will be three dischargers to Urbanna Creek which do not have nutrient limitations.

Commenters: Mike Floyd, H.Deiter & Mary E. Hoinkes

Comment: Flow from the proposed wastewater treatment plant should be limited in the permit. Otherwise, nutrient offsets should be required of the permittee.

Commenters: John Zuegner, Robert Burnley

Staff Response: The proposed treatment plant will be designed to meet nutrient removal standards for an "existing discharger" that is not considered a significant discharger under §62.1-44.19:14.C.5 (Code of Virginia) and 9 VAC 820-10 (Chesapeake Bay Watershed General Permit Regulation). In addition, Total Kjeldahl Nitrogen is limited to a concentration of 3.0 mg/L monthly average in the draft permit re-issuance. It should be noted that the original permit was issued in December 2003 with the same design flow criteria. This 2003 issuance existed prior to the promulgation of the above regulations regarding the definition of a significant discharger for the purposes of determining coverage under the Chesapeake Bay Watershed General Permit.

Monitoring and testing requirements for established pollutant limits in permits are divided into categories depending on the design flow of the permitted facility. With each increasing flow category, the

monitoring and testing requirements, and costs, can increase significantly, causing economic strain on small dischargers. The first monitoring and testing category for municipal facilities stops with a design flow of 40,000 gallons per day.

The design flow capability of a treatment facility is not the rate at which the permittee discharges. Nevertheless, it is used as a basis for limitation development in order that conservative calculations and assumptions may be made. The permittee is required to notify DEQ if the facility discharges at a rate within 95% of the design flow, at which point DEQ takes appropriate actions. Part I.B.1 of the draft permit addresses this. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: The Middlesex County government has claimed that the local high school's existing drainfield is failing and that the high school will need to be served by the proposed wastewater treatment plant. A few concerned citizens do not believe that this is true.

Commenters: H.Deiter, Mary E. Hoinkes, Sean Kemple

Staff Response: The reasoning provided by a permittee for requesting a discharge permit is not a part of DEQ's evaluation of whether or not the discharge is permissible by applicable law. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

5) Issue: Will the proposed wastewater treatment plant be reliable?

Comment: Concern exists over the permittee's ability to afford and construct a high quality treatment plant that will not fail during power outages and severe weather conditions.

Commenters: H.Deiter & Mary E. Hoinkes, Urbanna Town Council/Janet Smith, Peter Mansfield, Alana Courtney

Staff Response: As part of the conditions and limitations set forth in the draft permit, the permittee is mandated to comply with the requirements set forth in 9 VAC 25-790-390 of the Sewage Collection and Treatment Regulations to meet a Reliability Class of One (1). This requires that the permittee take all precautions to be able to operate at peak flows for a minimum of 24 hours without power. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

6) Issue: Has groundwater quality been considered with respect to the existing "swallow hole" located downstream of the proposed discharge?

Comment: Groundwater contamination may occur due to the "swallow hole" that the intermittent stream flows into. This is sited in the Stream Sanitation Memorandum used for permit development.

Commenters: Clifford Randall

Staff Response: It is not expected that groundwater resources will be affected. In addition, the effluent from the proposed treatment facility will be treated to much higher levels than the surrounding septic systems, which rely on soil as a medium for bacterial growth and treatment of raw sewage. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

7) Issue: How does the existing bacterial TMDL for Urbanna Creek have a bearing on this permit's re-issuance?

Comment: The current TMDL for Urbanna Creek addressing Fecal Coliform bacteria states that "... measures must be taken to reduce pollutant levels in the water body." The proposed wastewater treatment plant will go against this statement.

Commenters: Sean Kemple,

Comment: This permit re-issuance is prohibited by SWCB regulation 9 VAC 25-31-50 C.9 and CWA regulation 40 CFR 122.4(i) which states that no new discharges will be allowed to water bodies if it will contribute or cause the water segment to violate WQS. These regulations do provide for an exception in that if a TMDL has been established for that water body, then a new discharge to that water body is only allowed if it was given an allocation in the TMDL and existing discharges have been given a compliance schedule with conditions that will bring the water body into compliance with the WQS. Since a TMDL has been established for Fecal Coliform on Urbanna Creek, and existing dischargers do not have a wasteload allocations or a compliance schedule to meet them, and the proposed discharger has not been

given a wasteload allocation, the permit is prohibited. It has also been established that the Chesapeake Bay watershed is “impaired” by nutrient pollution. Since a TMDL has not been implemented for the Chesapeake Bay for nutrients, the proposed discharge will contribute additional nutrients to the water body that is already violating WQS.

Commenters: Chesapeake Bay Foundation/Joseph Tannery

Staff Response: The proposed discharge is to an intermittent tributary of Urbanna Creek 0.8 miles upstream of tidal waters. The Virginia Department of Health/Department of Shellfish Sanitation (VDH/DSS) has assigned two different types of shellfish closures to Urbanna Creek. The upper portion of tidal Urbanna Creek (area 42B) has been designated by the VDH/DSS as a “prohibited” shellfish growing area due to the presence of the HRSD Urbanna Sewage Wastewater Treatment Plant, which discharges directly to the tidal portion of Urbanna Creek. In prohibited areas, shellfish are not allowed to be harvested for market. Prohibited shellfish areas are not considered impaired for fecal coliform (and thus do not require a TMDL) because this administrative closure by the VDH removes shellfish harvest as a beneficial use of these waters.

The lower portion of tidal Urbanna Creek (area 42A) has been designated as a “condemned” shellfish growing area, where harvested shellfish must first be transported for depuration in other non-condemned waters for 30 days prior to consumption or sale. The TMDL addressing fecal coliform bacteria that is referenced by the commenter only applies to the portion of Urbanna Creek corresponding to shellfish area 42A. The proposed discharge (in addition to the Middle Peninsula Regional Security Center, VA0073318) would flow to area 42B (if either effluent were to reach tidal Urbanna Creek). Since these existing dischargers will not expand to the current shellfish harvest prohibited zones, they are not addressed or subject to the TMDL. PRO Planning and Assessments staff have certified that the proposed permit will not be in conflict with the Urbanna Creek fecal coliform TMDL.

Regarding the nutrient impairment of the Chesapeake Bay, as previously cited, 9VAC 25-40 and 9VAC 25-720 constitute the nutrient reduction requirements for point source dischargers in the Chesapeake Bay Watershed to protect the Chesapeake Bay and its tidal rivers. These regulations establish no additional permitting requirements for municipal facilities within the Bay watershed with a design flow of less than 40,000 gallons per day. Consequently, the proposed permit is in full compliance with all applicable legislation and water quality regulations.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

#### 8) Miscellaneous Comments

Comment: The Middlesex County government (the permittee) does not sufficiently consider the wishes of its citizens because the Town of Urbanna is represented by an elected district supervisor who covers a much larger area than the Town. If the Town were independently represented in the county government, there would be more political pull and the decision to construct a wastewater treatment plant would not have come to fruition.

Commenters: Robert Straw, Roger Martin

Comment: The location of the venue (outside of Urbanna), time of year, and the temperature discouraged people from attending the public hearing held on January 21, 2009 at 7:00 pm. Also, the question and answer session held prior to the hearing was too short.

Commenters: Sean Kemple

Comment: The Town of Urbanna’s jurisdictional boundary extends to the middle of Urbanna Creek. The citizens of the Town do not want to allow the proposed discharge to occur, but do not have independent representation in the Middlesex County government in order to oppose it.

Commenters: Urbanna Town Council/Janet Smith

Staff Response: These comments are not relevant to DEQ’s determination of applicable State environmental regulations.



LEGAL BASIS/RECOMMENDATION: The VPDES discharge permit for the Middlesex Courthouse (VA0091316) has been prepared in accordance with all applicable statutes, regulations and agency practices; the effluent limits and conditions in the permit have been established to protect instream beneficial uses and fish and wildlife resources and to maintain all applicable water quality standards; and all public comments relevant to the permit have been considered and therefore, staff recommends that the Board approve re-issuance of the permit.

### **Nutri-Blend VPA (Goochland)**

*Issuance of VPA Permit No. VPA00806, Nutri-Blend (Goochland County)* - On May 30, 2008, DEQ received a Virginia Pollution Abatement (VPA) application from Nutri-Blend for the Issuance of Permit VPA00806, for land application of biosolids on several agricultural sites in Goochland County. Nutri-Blend was not authorized to apply biosolids in Goochland County under either the old DEQ VPA or the Virginia Department of Health Biosolids Use Regulation (BUR) permit programs. The draft permit authorizes application of biosolids to 1555.6 acres of cropland and hay/pasture land. Notification regarding DEQ's receipt of the application was made to the Goochland County Administrator and copied to the Virginia Department of Health and Department of Conservation and Recreation by letter on September 15, 2008, and a notice of the application and a public meeting was published in the *Goochland Gazette* newspaper on January 29, 2009. A public information meeting was held on February 5, 2009; given the level of public concern expressed at this information meeting, DEQ opted to hold a public hearing on the draft permit during the initial public comment period. Notice of the draft permit and public hearing was published in the *Goochland Gazette* newspaper on July 2, 2009, and July 9, 2009. The public comment period ended on August 21, 2009. The hearing was held at 7:00 p.m. on August 3, 2009, in the Goochland County Administrative Building in Goochland, Virginia. Rev. Shelton Miles served as hearing officer. An informational meeting and a question and answer session preceded the hearing. Including the applicant, 12 individuals provided verbal comments at the public hearing. DEQ received 13 comments during the comment period, including the verbal comments. Staff received several comments on the draft permit and combined some of them where it is possible without losing specifics. A detailed summary of the comments received with staff responses follows. Most of the citizens providing comment were either opposed to the application of biosolids, or requested more stringent permit requirements.

#### **Summary of Comments Received During the Public Comment Period and Public Hearing**

1. *Opposed to land application of biosolids.* Two speakers and one writer expressed unqualified opposition to the practice of land application. One speaker and one writer were opposed to land application of Class B biosolids. One speaker opposed draft VPA00806.

#### **Staff Response**

The DEQ appreciates the information provided by commenters who are opposed to the land application of biosolids. The agency, however, is tasked with supporting environmental law through enforcement of regulations. At the present time, the practice is authorized and regulated in Virginia.

2. *Water quality in the James River and Chesapeake Bay.* Responses requested permit action that ranged from denial/withdrawal of the permit to largely increased buffers for land application. Concerns were raised regarding the total acreage in Goochland County permitted for land application.

#### **Staff Response**

Draft VPA00806 was prepared in accordance with 9VAC25-32-10 et seq. These regulations were written to be protective of water quality, but are being reviewed and amended following the transfer of the biosolids program to DEQ. The agency encourages any citizen to attend the open meetings of the DEQ and its Biosolids Technical Advisory Committee. Meeting information is posted on the Town Hall website of the Virginia government website and on DEQ's website.

3. *EPA 503 Rule.* Three speakers questioned the adequacy of the EPA 503 Rule.

#### **Staff Response**

DEQ can not comment on the adequacy of a Federal Rule. While the VPA regulation is based on the EPA 503 Rule, it does include additional requirements and restrictions, such as nutrient management plans for all land application sites and buffer zones around occupied dwellings and along property lines.

4. *Environmental health.* Three speakers and one writer expressed concerns for the possibility of public health risks from the land application of biosolids. One speaker expressed concern for biosolids constituents entering the food chain. One speaker stated that after 30 years of biosolids use on his farm, neither he nor his family suffered any ill health effects.

Staff Response

As required by § 62.1-44.19:3, DEQ submitted the application and draft VPA00806 to the Virginia Department of Health. No recommendations for permit modification to protect public health were received. Prior to the August 3 public hearing, information stations were available to the citizens of Goochland County. During the course of the evening, the two VDH representatives did not receive any requests for permit modification on the grounds of specific health concerns. VDH has not reported any requests to DEQ for permit modification since that time.

In its 2008 Report to the Governor and General Assembly (House Document No. 27), the Governor's Expert Panel on Biosolids stated the following:

*In early discussions, the Panel agreed that addressing the questions surrounding citizen-reported health symptoms should be its highest priority. In the past 18 months, the Panel uncovered no evidence or literature verifying a causal link between biosolids and illness, recognizing current gaps in the science and knowledge surrounding this issue. These gaps could be reduced through highly controlled epidemiological studies relating to health effects of land applied biosolids, and additional efforts to reduce the limitations in quantifying all the chemical and biological constituents in biosolids. While the current scientific evidence does not establish a specific chemical or biological agent cause-effect link between citizen health complaints and the land application of biosolids, the Panel does recognize that some individuals residing in close proximity to biosolids land application sites have reported varied adverse health impacts.*

5. *Development of state regulations.* One speaker stated that three citizens on the TAC resigned due to their concerns that health issues were not being adequately addressed by the TAC; another speaker received permission from Chairman Miles to read the resignation letter. The speaker then expressed disappointment in the resignations. One speaker, citing excerpts from the Governor's Expert Panel, stated that legislators have let the citizens down.

Staff Response

DEQ welcomes citizen applications from any who are willing to volunteer their time and expertise in serving on the TAC. Please contact the Office of Land Application at the DEQ Central Office (629 Main Street, Richmond, VA 23219) for more information.

6. *Permit application and draft permit documents.* One speaker expressed concerns with the application submitted by Nutri-Blend, Inc. as well as the availability of all documents available for public review. This speaker stated that acreage in the draft permit exceeded acreage in the application reviewed at February's public meeting. Lack of response by DEQ to requests for information was also stated as a concern. The speaker said that black and white copies of the maps were not legible as opposed to the color versions presented at the meeting. The speaker stated that DEQ was told to mark the land application sites on the county's GIS map and it wasn't done. The speaker said that the hand-writing on the Form D portion of the application appears to be the handwriting of one person.

Staff Response

Hard copies of the legal notice, permit application, draft VPA00806, fact sheet, and DEQ personnel contact information were placed at the Goochland County Administration Office, Virginia Cooperative Extension Office, and library on July 1, 2009. While not mandated by regulation, DEQ-PRO determined the additional cost to exceed the requirements was justified on the basis of transparency since citizen concerns were documented at the initial February 5 public meeting. The legal notice announcing the availability of the draft permit and the public hearing appeared in the *Goochland Gazette* on July 2 and July 9 in accordance with applicable laws and regulations. The notice was also posted on the Virginia Town Hall website. An electronic copy was provided to the Goochland County Environmental Engineer for posting on the County website. All legal advertising requirements for draft VPA00806 were met or exceeded.

The number and location of fields presented in the application by Nutri-Blend, Inc. has not changed since the February 5 meeting, with the exception of fields that were voluntarily withdrawn at the applicant's request. The format of the listing of those sites *was* modified by DEQ; concerns raised by the TAC after the February 5 public meeting resulted in changes to agency guidance, which precipitated the change in site listing format. Those changes in format were explained to Goochland County personnel, as well as to citizens who contacted DEQ and those who attended the August information and Q&A sessions that preceded the public hearing. DEQ received no specific requests for information or additional documents from any citizen in Goochland County from the announcement of the public hearing to the present.

7. *Local Ordinance.* One speaker requested that the State Water Control Board delay issuance of the permit until Goochland County had fully implemented its ordinance regarding biosolids.

Staff Response

The draft permit is intended to enforce state laws and regulations; Goochland's implementation of their ordinance is an action that is independent of the action before the SWCB.

8. *Limit on application.* Citing numbers of county school children with asthma and other chronic health conditions, a speaker requested imposing time restrictions on applications such that no applications be made during the school year. One writer requested incorporation with no stockpiling or land application. One speaker and one writer requested that only Class A biosolids be permitted for land application.

Staff Response

As required by § 62.1-44.19:3, DEQ submitted the application and draft VPA00806 to the Virginia Department of Health. No recommendations for permit modification to protect public health were received.

9. *Signage and notification.* Three speakers and one writer expressed concerns with the visibility of notification signs posted at land application sites. One speaker and one writer requested that notification times be improved.

Staff Response

The draft permit enforces current requirements for signage. The Biosolids TAC is currently in the process of meeting with DEQ administrators for the revision of the VPA Biosolids Regulations. Signage and notification concerns continue to be addressed by that group. The agency encourages any citizen to attend the open meetings of the DEQ and its Biosolids Technical Advisory Committee. Meeting information is posted on the Town Hall website of the Virginia government website and on DEQ's website. Until the regulations are amended, the County, or alternately, the citizens, are welcome to discuss with the applicant any desired improvements to the posting of signs.

10. *Permit compliance issues.* One speaker and one writer expressed concern with biosolids being tracked from the farm onto public roadways. One speaker stated that biosolids were applied in Goochland County at a time of heavy rain. One writer requests that the term of the permit be limited.

Staff Response

DEQ-PRO biosolids inspectors are routinely in the field when there is land application scheduled in the region. Every attempt is made to prevent tracking of biosolids onto public roadways; when it occurs, DEQ requires remediation by the permittee. A call was received by DEQ-PRO regarding the land application event cited by the speaker. A DEQ inspector was present during that application and determined that there was no violation of any biosolids regulation. VPA permits are issued for a term of ten years.

11. *Site access and other site issues.* One speaker requested that all sites along the James River be withdrawn. One speaker stated that wildlife can not be forced to observe the 30 day grazing restriction. One speaker expressed concern over a land application in close proximity to a restaurant. One speaker expressed concern over the total of all permitted land in Goochland County.

Staff Response

The regulations specify buffer zone requirements for several situations on the basis of protecting water quality and public health. Those are incorporated into all VPA permits. The buffers are enforced by DEQ biosolids inspectors. The TAC continues to review concerns related to buffer distances and site access issues. The agency encourages any citizen to attend the open meetings of the DEQ and its

Biosolids Technical Advisory Committee. Meeting information is posted on the Town Hall website of the Virginia government website and on DEQ's website.

12. *Biosolids and soil testing.* Six speakers commented on the testing requirements for biosolids. One requested testing and source identification of each truck load of biosolids. One speaker requested more testing of biosolids and soils before, during, and after land application. One speaker stated that biosolids research is incomplete since many substances are not tested for. One speaker requested that tests be expanded to include many more biosolids constituents than what is currently required.

Staff Response

The draft permit does require more frequent testing by larger generators of biosolids. The testing frequencies in the draft permit are considered reasonable to demonstrate representative concentrations of nutrients and other parameters in the biosolids, so that the applicator and farmer can comply with the other conditions of the draft permit.

13. *Benefits to county farmers.* One speaker stated that biosolids provide an economic benefit to farmers. He also stated that biosolids applications have reduced soil erosion on Goochland County farms.

Staff Response

None required.

*Comments and Commenters:*

Name/ Organization	Method	Date	Comments/ Concerns
Betty J. DeHart	Hearing	8-3-09	Opposes sewage sludge application in Goochland County
Kathy W. Crockett	Hearing	8-3-09	Citing numbers of county school children with asthma and other chronic health conditions, requests that permit restrict land application in Goochland County to those days in the year that county schools are not in session
			Requests that the [VDH] list of conditions that may be impacted by land application of biosolids be expanded
			States that the handwriting on the Form D portion of the application appears to be one person's writing and requests a response from DEQ and requests that the source of all biosolids loads be identified
			Requests that required testing of biosolids constituents be expanded to include many additional substances
			Refers to nutrient problems in the James River and a point source upstream of a county park, and states that biosolids were applied at a time of heavy rain
			States that the draft permit acreage does not equal the permit application acreage
			States that she did not have access to all documents in time to fully prepare remarks; requests that hearing be delayed 30 days
			States that the B&W maps were not legible and that she was unable to obtain a package prior to the hearing
			States that DEQ was told to mark the land application sites on the county's online GIS map, and it wasn't done
			Requests that the permit be withdrawn
			Requests that all sites along the James River be withdrawn
			States that more testing of the biosolids and soils needs to be done before, during, and after land applications
			Requests that the SWCB delay issuance of the permit until the County can fully implement the county's ordinance
Linda Sasser	Hearing	8-3-09	States she is a small farmer with concern about water quality in

Name/ Organization	Method	Date	Comments/ Concerns
			the James River and Chesapeake Bay
			States her concerns about biosolids constituents entering the food chain
			Requests that the notification sign at land application sites be printed on two sides so as to be visible to traffic from either direction
			States her concern about a land application in close proximity to a restaurant
			States she is adamantly opposed to land application of biosolids
Susan Lascolette	Hearing	8-3-09	States she opposes VPA draft permit 00806
			States her concern for total acreage in Goochland County permitted for land application
			States her concerns for shortcomings of EPA 503 Rule
			Citing excerpts from The Governor's Expert Panel, states that legislators have let the citizens down
			Requests that the SWCB deny the permit and find a way around Virginia's Right to Farm Laws
John Hosay	Hearing	8-3-09	States that there was no pathogen risk assessment conducted for the EPA 503 Rule
			States his concerns about the risks of biosolids
Paul Lanier	Hearing	8-3-09	States that he is a large landowner in the county with a cattle business
			States that no ill effects to him or his family have occurred during 30 years of using biosolids
			States that biosolids are a financial benefit to farmers who could not afford equivalent amounts of commercial nutrients
			States that biosolids have helped Goochland County farmers control erosion
			States that his personal research has not uncovered a single documented case of health problems for the general public associated with biosolids
			States that most cattle in US have grazed on pastures receiving biosolids
			Requests that permit be approved
Linda Hosay	Hearing	8-3-09	States that biosolids research is incomplete since many substances are not tested for
			States that wildlife can not be forced to observe 30 day grazing restrictions
			States that courts have faulted the 503 Rule
			States that it is a faulty assumption that biosolids is the only fertilizer farmers can afford
			States her concern for water quality
			Requests that every truckload of biosolids be tested prior to land application
			Requests that testing be expanded to include many more substances than currently required
			Requests that only Class A biosolids be land applied
			Requests signage and warning times be improved

Name/ Organization	Method	Date	Comments/ Concerns
Wendie Roumillat	Hearing	8-3-09	States she has spent 37 years in Goochland County
			States her father was impacted by a 1998 biosolids application
			States that citizens on TAC resigned because health concerns were not being addressed
			States concern for water quality
			States notification signs are too small
			States concern with biosolids being tracked onto roadways
			Requests more biosolids testing
David Des Roches Reporter, <i>Central Virginian</i>	Hearing	8-3-09	Request to interview Mr. Miles, hearing officer, was granted
			Prefers other materials such as food waste composts be used for land application
Jacqueline Pogue	Hearing	8-3-09	Requested and received permission from Mr. Miles, hearing officer, to read letter of resignation from former TAC members
			States that she is disappointed by the resignations
Jeanne Hamm	USPS	8-17-09	Cites personal health concerns impacted by land application
			Opposes sewage sludge application in Goochland County
			Requests only Class A biosolids be land applied
			Requests incorporation with no stockpiling or land application
			Requests that permit terms be limited
			Requests signs be legible from two directions
			Requests notice signs be posted 2-4 weeks in advance
			Requests landowners names and phone numbers be on the signs
			Requests track out be cleaned from roadways

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#### *Final Regulations*

#### ***General VPA Permit for Poultry Litter Management – Amendment (SEE PAGE 50)***

#### **Discharge of Sewage & Other Wastes from Boats – Amendment**

*Amendment of 9 VAC 25-71-70, Regulations Governing the Discharge of Sewage and Other Wastes from Boats* - Staff will ask the Board to amend 9 VAC 25-71-70 to add the Broad Creek, Fishing Bay and Jackson Creek Watersheds, located in Middlesex County, to the regulation listing of state designated boating “No Discharge Zones”. Boat sewage discharges are regulated by the federal government by requiring boats with installed toilets to have either sewage treatment units which treat and discharge or holding tanks that do not discharge and must be pumped out. Pump out facilities are usually located at marinas and are regulated by the Virginia Department of Health. Discharging raw sewage, such as, from holding tanks or portable toilets is prohibited by state law and the SWCB boating regulation, 9 VAC 25-71. Federal law does not allow a state to adopt regulations for boat sewage treatment units that are more stringent than federal regulations, but it allows a state to petition EPA for designation of No Discharge Zones, where all sewage discharges, treated or untreated, are banned. The state must demonstrate that the particular water body requires special protection, that there are adequate pump out facilities in the area, and that the No Discharge Zone can be enforced. It should be noted that since untreated sewage discharges from boats are illegal, the only difference in a No Discharge Zone with respect to the law is that boats with treat and discharge units cannot use them. However, the public outreach and increased law

enforcement efforts in No Discharge Zones usually provide for more protection of the waters with regard to previously undetected illegal discharges, so significant improvement can occur. The citizens of Deltaville requested that DEQ petition EPA to designate the Broad Creek, Fishing Bay and Jackson Creek Watersheds as boating sewage No Discharge Zones. The watersheds are confined, experience a great deal of boating traffic, and are listed as impaired water bodies due to fecal contamination. As part of the TMDL plans to clean up the watersheds, the citizens of Deltaville asked DEQ to precede with these No Discharge Zone designations and have worked with staff to develop the necessary information to submit to EPA. At its June 2008 meeting, the Board was notified of the staff's intention to seek these No Discharge Zone designations. Since then, in accordance with EPA regulation 40 CFR Part 140.4(a), DEQ has provided EPA with the required information, and EPA approved the No Discharge Zones by letter dated September 2, 2009.

PROPOSED ACTION: Amend boating regulation 9 VAC 25-71 (attached), by adding these Watersheds and their boundaries to the No Discharge Zone listing in 9 VAC 25-71-70 (new language underlined).

### **WQMP Regulation - Amendments - Nutrient Waste Load – Allocation Deadline Extensions**

*Petitions to Extend Conditional Nutrient Waste Load Allocations in 9 VAC 25-720 (WQMP Regulation)-*

In late 2005, when nutrient waste load allocations (WLAs) were originally adopted in the Water Quality Management Planning (WQMP) Regulation, several dischargers were given conditional WLAs based on expanded design flow that must be constructed and issued a Certificate To Operate (CTO) by 12/31/10. There were seventeen of these conditional allocations, with accompanying "footnotes" in the Regulation explaining the conditions to be met. The 2009 General Assembly passed legislation (HB 1074/SB 1022) authorizing the Board to accept petitions through 7/10/09, for the purpose of conducting an expedited rulemaking process involving plants with "footnoted" WLAs. The petitions must be for the sole purpose of extending the deadline to no later than 12/31/15. Owners submitting a petition are still required to comply with their nutrient allocations as of 1/01/11, through the Nutrient Credit Exchange Program or by other means. The Board must approve or deny these petitions and adopt any resulting regulation amendments within 180 days of the petition deadline (by 1/06/10). Before making a final decision on the petitions, the Board shall provide an opportunity for public comment.

PETITIONS RECEIVED: DEQ received petitions for seven plants by the deadline:

Petitioner	River Basin	Requested Amendment/ <i>Petitioner Comments</i>
Cape Charles	E. Shore	<u>Extend deadline to 12/31/15 for expansion to 0.5 MGD.</u> <ul style="list-style-type: none"> <li>• 0.25 MGD plant being built; complete by Oct. 2011</li> <li>• Assuming economic recovery by end of 2010, 0.25 MGD viable until 2016</li> <li>• Site layout, power distribution, and piping designed for future expansion</li> <li>• Wish to avoid prematurely incurring the additional cost of effluent reuse by preserving 0.5 MGD WLA</li> </ul>
Culpeper Co.- Mountain Run	Rappahannock	<u>Extend deadline to 12/31/15 for construction of new 2.5 MGD Mountain Run STP.</u> <ul style="list-style-type: none"> <li>• Need for 2.5 MGD WLAs based on 2005 projections for rapidly growing Co. areas; significant downturn in economy in 2007 caused new home construction to drop to less than 10% of 2006 level</li> <li>• Adopted sewer service area in Town Environs 10/2/07</li> <li>• Purchased plant site (\$1.1 MM) and spent \$1.4 MM on design; built interim plant (0.1 MGD; \$1.46 MM)</li> <li>• Modified VPDES permit to include 2.5 MGD flow tier</li> <li>• Certificate to Construct issued 4/28/08</li> <li>• Committed to spend \$0.5 MM in 2010 to design part of sewer system</li> <li>• Dependent on growth revenues to fund construction; can't</li> </ul>

Petitioner	River Basin	Requested Amendment/ <i>Petitioner Comments</i>
		<i>predict when economy will rebound</i>
Fauquier Co. W&SA- Remington	Rappahannock	<u>Extend deadline to 12/31/15 for expansion to 2.5 MGD.</u> <ul style="list-style-type: none"> <li>Plant currently has CTO for 2.0 MGD</li> <li>Project underway to add nutrient reduction system without expansion; complete by Oct. 2010</li> <li>Both HB 2074 &amp; SB 1022 were introduced by Rapp. River Basin Commission members with FCW&amp;SA in mind re. economic challenges to complete plant expansions in adverse economic climate</li> <li>Need sufficient treatment capacity for smart-growth in State-mandated Urban Development areas</li> <li>Est. 90% of infrastructure is in-place that would be needed for 2.5 MGD design capacity</li> <li>Temporary deferral of expansion consistent with State Policy and WQIF grant funding priorities</li> <li>Extension helps remedy failed privately-owned onsite drain fields in Catlett and Calverton</li> </ul>
Fauquier Co. W&SA-Vint Hill	Shenandoah - Potomac	<u>Extend deadline to 12/31/11 for expansion to 0.95 MGD.</u> <ul style="list-style-type: none"> <li>Plant currently has CTO for 0.6 MGD</li> <li>Construction underway to add nutrient reduction system and expand to 0.95 MGD; scheduled for completion by Aug. 2010</li> <li>Both HB 2074 &amp; SB 1022 were introduced by Rapp. River Basin Commission members with FCW&amp;SA in mind re. economic challenges to complete plant expansions in adverse economic climate</li> <li>Extension would cover potential construction delays</li> <li>Authority made good-faith effort to initiate and complete expansion by 12/31/10 deadline</li> <li>Contractually obligated to provide capacity beyond 0.6 MGD to Vint Hill Farms EDA (0.4 MGD) and another developer has paid \$9 MM for sewer availability (982 connections)</li> <li>Essential project for ongoing economic recovery from closure of Army's Vint Hill Farms Station</li> </ul>
Harrisonburg- Rockingham S.A.-North River	Shenandoah- Potomac	<u>Extend deadline to 12/31/11 for expansion to 20.8 MGD.</u> <ul style="list-style-type: none"> <li>Construction underway; plant actually being expanded to 22.0 MGD with nutrient reduction system, but Authority accepted WLA for 20.8 MGD capacity; WQIF grant pro-rated with eligibility limited to lower design flow</li> <li>Schedule has substantial completion by Nov. 2010</li> <li>Current project status indicates completion may or may not be achieved by Dec. 2010; contractor has outstanding delay claims (180 days) yet to be resolved</li> <li>According to payment records, construction about 89% complete to-date</li> <li>HRRSA commits to complete project expeditiously and even if petition is approved would still strive to meet 12/31/10 deadline</li> </ul>
Onancock	E. Shore	<u>Extend deadline to 12/31/11 for expansion to 0.75 MGD.</u> <ul style="list-style-type: none"> <li>Plant currently has CTO for 0.25 MGD</li> <li>Construction underway; behind schedule due to delays in release of funding from VCWRLF and USDA Rural Development</li> </ul>



Petitioner	River Basin	Requested Amendment/ <i>Petitioner Comments</i>
		<p>(result of lawsuit filed against the Town), and issues with subcontractors.</p> <ul style="list-style-type: none"> <li>• Substantial completion originally scheduled by 3/1/10; now projected for mid-Oct. 2010</li> <li>• Working with contractor and subs to address delays, but may not be in time to secure CTO by 12/31/10</li> </ul>
Shenandoah Co.-N. Fork Regional	Shenandoah-Potomac	<p><u>Extend deadline (assume to 12/31/15; not stated).</u></p> <ul style="list-style-type: none"> <li>• County must secure CTO for 0.75 MGD facility for conditional WLA</li> <li>• 0.1 MGD plant exists, but no sewer collection system (permit has flow tiers for 0.25 and 0.75 MGD)</li> <li>• Facility was an industrial discharger that ceased production; County bought facility to create a regional wastewater plant but potential customers opted for another system)</li> <li>• County has under design a pump station and force main to transfer landfill leachate and County-wide septage pump-outs to the plan</li> <li>• County examining options to “bubble” WLA with two other County-owned plants</li> </ul>

#### CURRENT STATUS

- Agency posted petitions on DEQ webpage shortly after 7/10/09 receipt deadline.
- Comment period ran from 7/24 – 8/28/09.
- Two sets of comments received.

#### SUMMARY OF COMMENTS

##### 1. Chesapeake Bay Foundation, Joe Tannery/VA Deputy Director:

- Acknowledges rationale used to assign several conditionally increased WLAs during development of original WQMP allocations in 2005.
- Emphasized that DEQ Final Regulation Agency Background Document (7/5/05) stated: “*Consideration has been given to plants that are actively involved in plant expansion, with a reasonable assurance that the increased capacity would be in-place and certified for operation in the year 2010.*” (emphasis added)
- CBF did not directly object to footnotes based on DEQ’s assurances that expansions would be complete within 5 years. Also believed that WLAs would be adjusted to ensure water quality standards compliance whenever it was discovered that assigned WLAs failed to meet the standards (i.e., 9 VAC 25-720-40.D.).
- Regulations are very clear that failure to obtain a CTO by 12/31/10 invokes the authority and duty of the SWCB to act in accordance with 9 VAC 25-720-40.D. (i.e., adjust WLAs).
- CBF understands the 2009 legislation allows “footnoted facilities” to seek an extension beyond the 12/31/10 deadline, but also clearly indicates that the Board retains its discretionary authority to either approve or deny the petitions. The legislation, however, does not remove DEQ and the Board’s legal requirement under the Clean Water Act, the State Water Control Law, and attendant regulations to ensure water quality standards compliance when reviewing the petitions.
- Based on recent (preliminary) EPA Bay Program modeling, the previous Tributary Strategy levels of nutrient reduction will be more difficult to achieve; to meet water quality standards there is an estimated gap of 70 million pounds of nitrogen and 8 million pounds of phosphorus.
- Inherent in this finding, and recently released draft Federal Executive Order reports on Bay clean-up, is that point source WLAs may have to be reduced further.
- Petitioners have several options available to meet lower WLAs, including forgoing a portion of excess capacity, accommodate future growth using the Nutrient Credit Exchange Program, “bubble” WLAs, or seek allocation offsets from other plants.
- CBF requests that the Board deny all petitions for the following reasons:
  - Culpeper Co.-Mountain Run: Town of Culpeper and County plants both have footnotes, creating at a minimum 1 MGD of excess capacity in overlapping service areas. Failure by the localities to reach

agreement on a regional approach is self-inflicted and not beyond the control of petitioner. Seeking extension to await new growth is not valid grounds for approval and contradicts original intent of footnote.

- Fauquier Co. W&SA-Remington: although 90% of infrastructure for expanded design flow is already in-place, Authority provides no reason why project hasn't progressed between 2005 and 2009. Failure to complete construction on a project that was 90% complete four years ago is the antithesis of DEQ's definition of "*actively involved in plant expansion*."
- Shenandoah Co.-North Fork Regional: a related rulemaking currently underway classifies this facility as a potential for "unused allocations" that can be transferred to other dischargers, such as Merck. If this plant moves forward to secure the expanded flow CTO, it would be more appropriate to classify as a new discharger and require the complete offset of any additional loading.
- Fauquier Co. W&SA-Vint Hill and Cape Charles: Unrealized development projections since 2005 obviate the need to retain higher WLAs and don't provide a valid rationale for an extension. If higher density redevelopment occurs, the Nutrient Credit Exchange Program provides a viable means of compliance with the lower WLAs in the footnotes.
- Harrisonburg-Rockingham Regional S.A.-North River: a precautionary extension for security against any unforeseen delays over the next 18 months shouldn't be considered grounds for extension. Moreover, DEQ and the Board must consider whether approval of the higher WLA will ensure water quality standards compliance even if CTO is obtained by 12/31/10.
- Onancock: recent newspaper articles indicate Onancock STP has excess and unneeded capacity, and the Town is considering taking on a larger service area in Accomack County. This action indicates that facility expansion will award the Town with capacity in excess what is actually needed to serve its current customer base. The "footnote policy" wasn't intended to allow acquisition of excess capacity to support non-existent development.

2. Piedmont Environmental Council, Dan Holmes/Director of State Policy - specific to the Culpeper Co.-Mountain Run petition:

- The County's petition acknowledges the deadline, and failure to obtain the CTO by 12/31/10 would result in a forfeiture of the additional capacity.
- The County is relying on questionable growth projections and has presented a false need in their original pursuit of 2.5 MGD capacity. PEC contends the County is attempting to bank future capacity which is inconsistent with State policy. Growth projections from 2005, based on a period of unprecedented growth in the Northern Virginia region, are outdated given recent drops in construction due to the current economic crisis.
- Suggest that the original projections be reconsidered, especially when supported by additional evidence of high foreclosure rates and bankruptcies of companies controlling residentially zoned land. Evidence would suggest the high growth rates seen earlier this decade are unlikely to return within the expected service life of the proposed facility.
- The County has failed to demonstrate significant progress in the construction of the facility; expenditures do not represent a significant investment in the 2.5 MGD capacity.
- The Town of Culpeper and Culpeper County are requesting capacity to service the same area.

The principal reason for amending the WQMP Regulation in late 2005 by assigning nutrient WLAs was the future achievement and maintenance of newly adopted water quality standards for Chesapeake Bay and its tidal tributaries. The conditional ("footnoted") WLAs were not intended to grandfather future capacity needs of the dischargers. The primary factor used to assess requests for conditionally increased nutrient WLAs was whether or not a discharger documented a "reasonable assurance" that the CTO would be secured by the 12/31/10 deadline. Consideration was given to plants with an imminent need for additional capacity and actively involved in plant expansion, with supporting documentation (in most cases taken in combination) including:

- Capital investments already made to facilities
- Schedules for planning, design and construction

- Generic compliance schedules and milestones for other plant expansion/upgrades that routinely span 4 years, and cannot exceed the life of the discharge permit (5 years)
- Compliance Orders
- Provision for tiered design flows in current permits

Staff is of the opinion that dischargers with footnoted WLAs that have made a good-faith, bona fide effort to complete construction by the deadline merit consideration for modest extensions due to extenuating circumstances. This rationale would apply to the petitions from HRRSA-North River, FCW&SA-Vint Hill and Onancock. The other petitioners have not progressed to the construction phase in the four years since the Board adopted the WLAs, thus contradicting the “reasonable assurance” given to DEQ at the time of the rulemaking. The delayed need for expansion due to challenging economic conditions is an impact being felt all across Virginia and is not unique to just the petitioners with footnoted WLAs. There were dischargers in 2005 that requested “footnoted” WLAs but could not assure DEQ that construction would be complete by 12/31/10, or the projected timing of the demand for expansion was beyond the deadline. To consider a deadline extension to the current petitioners not yet under construction, without affording a similar opportunity to other “non-footnoted” dischargers with future capacity needs, would be inequitable.

#### STAFF RECOMMENDATIONS:

1. Staff recommends that the Board approve amendments to 9 VAC 25-720, Water Quality Management Planning Regulation, extending the deadline for securing a CTO for expanded design flow and associated nutrient waste load allocations, for the following dischargers.
  - a. In 9 VAC 25-720-50. Potomac, Shenandoah River Basin, Section C:  
NOTE: (2) Harrisonburg-Rockingham Regional S.A.-North River STP: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by ~~12/31/10~~ 12/31/11, the WLAs will decrease to TN = 194,916 lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.
  - b. In 9 VAC 25-720-50. Potomac, Shenandoah River Basin, Section C:  
NOTE: (8) Fauquier Co. W&SA-Vint Hill STP: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by ~~12/31/10~~ 12/31/11, the WLAs will decrease to TN = 5,482 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.
  - c. In 9 VAC 25-720-110. Chesapeake Bay - Small Coastal - Eastern Shore River Basin, Section C:  
(2) Onancock STP: waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by ~~12/31/10~~ 12/31/11, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.
2. Deny the deadline extension petitions for Culpeper County-Mountain Run, Fauquier County Water & Sanitation Authority-Remington, Shenandoah County-North Fork Regional, and Cape Charles.

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#### *Proposed Regulations*

#### **Water Quality Standards - Other Triennial Review Issues**

*Request to Proceed to Public Hearing and Comment on Proposed Amendments to the Water Quality Standards – Triennial Review* - Staff intends to ask the Board for approval to go to public hearing and comment on amendments to the Water Quality Standards regulation to deal with two issues left over from the previous Triennial Review dealing with 9 VAC 25-260 Virginia Water Quality Standards. The proposed amendments would:

- 1) employ a conversion factor with the aquatic life water quality criteria for lead in freshwater and saltwater to apply the criteria to dissolved concentrations of lead, and
- 2) Replace the current freshwater water quality criteria for cadmium with entirely new criteria, updated to include new scientific information.

The Board has a legal mandate for a review of the Water Quality Standards under the Code of Virginia §62.144.15(3a) and federal regulation at 40 CFR 131 at least once every three years (i.e. a Triennial

Review). During a Triennial Review the Board may adopt, modify or cancel standards as appropriate. This rulemaking is needed because new scientific information is available to update the water quality standards and changes are needed to improve permitting, monitoring and assessment programs. The goal is to provide the citizens of the Commonwealth with a technical regulation that is protective of water quality in surface waters, reflects recent scientific information, reflects agency procedures and is reasonable and practical. During the public comment period of the last Triennial Review, six technical issues were raised that required additional study and these issues were separated out from the Triennial Review to allow time for additional review. At the October 2008 Board meeting the Board directed staff to reconvene the Triennial Review Advisory Committee to consider updates to aquatic life criteria for ammonia, copper, cadmium, cyanide and lead in § 9 VAC 25-260-140, Criteria for Surface Waters, and consider the need for a prohibition of any new or expanded mixing zones for persistent bioaccumulative toxic substances in § 9 VAC 25-260-20, General Criteria and Mixing Zones. The original Triennial Review Advisory Committee (list of members attached) was reconvened and met five times between February and June 2009 to discuss these issues and assist DEQ in deciding what course of action to take regarding these six issues. The associated materials, presentations and summaries of the meetings may be seen online at <http://www.deq.virginia.gov/wqs/rule.html#TR>. As a result of these meetings, DEQ staff is recommending two amendments to the Table of Parameters (Toxics) § 9 VAC 25-260-140 (attached). DEQ is not recommending action on the other four issues.

#### ITEMS FOR BOARD ACTION:

1. Amend water quality criteria for lead for the protection of aquatic life in freshwater and saltwater. Criteria for metals can be expressed as total recoverable or dissolved measurements. EPA's original criteria documents are based on total recoverable concentrations of metals. However, EPA recommends using conversion factors to convert these to dissolved concentrations to better represent the potential toxic effects on aquatic life. Virginia's criteria for lead are based on different information than EPA's criteria and staff needed to determine if the conversion factor recommended by EPA for their lead criteria is also appropriate for the Virginia lead water quality criteria. The advisory committee investigated the differences between the EPA and Virginia criteria for lead and determined the conditions in the original toxicity tests that form the basis for each of these criteria were the same. Because there was no difference in the test conditions, the conversion factor that EPA recommends applying to their criteria should be equally applicable to the Virginia criteria.

Staff recommends adjusting the Virginia criteria for lead by applying the conversion factors recommended by EPA. This will more accurately express the Virginia lead criteria as dissolved criteria. The conversion factor for lead acute and chronic criteria in freshwater is dependent on hardness. This will result in reducing the criterion for lead in waters with hardness greater than 25, ranging from approximately 1% to 30 % depending on the hardness level. For saltwater, the conversion factor for lead acute and chronic criteria is 0.951. The revised lead criteria are shown in the attached § 9 VAC 25-260-140, Criteria for Surface Waters, Table of Parameters.

2. Revise water quality criteria for cadmium for the protection of aquatic life in freshwater. An assessment of the toxicity of cadmium to freshwater aquatic life was conducted by the U.S. Geological Survey (USGS) and published in December 2006. The USGS report includes consideration of all information included in the latest (2001) EPA criteria document for cadmium, plus additional, more recently published toxicity information. The USGS report represents the latest compilation of toxicity literature available for cadmium in freshwater and can be viewed as an update to the 2001 EPA criteria reassessment for cadmium. The advisory committee found this USGS report to be technically sound. The USGS report was particularly concerned with cadmium toxicity for certain trout species resident to Idaho and the USGS report recommended establishing a lower acute criterion recommended to protect certain endangered species of trout found in Idaho. These trout species are not resident in Virginia and this extra level of protection is not needed for criteria in Virginia. Accordingly, DEQ has adjusted the acute criterion formula to apply to species found in Virginia waters. The proposed criteria for cadmium are more stringent than the current Virginia freshwater criteria for cadmium based on a 1985 EPA criteria document. However, compared to the 2001 EPA cadmium criteria the proposed acute criterion is similar or slightly more stringent, while the chronic criterion is less stringent.

Staff recommends revising the water quality criteria for cadmium for freshwater based upon new scientific information. The resulting cadmium criteria will be more stringent than the current Virginia criteria, but not as stringent as the current EPA recommended 2001 criteria for cadmium that had been originally proposed during the 2008 Triennial Review. The revised cadmium criteria are shown in the attached § 9 VAC 25-260-140, Criteria for Surface Waters, Table of Parameters.

Four other issues were discussed with the advisory committee but staff does not believe revisions to the regulation are warranted at this time:

**Ammonia and Copper Criteria § 9 VAC 25-260-140:** During the advisory committee meetings, new scientific information was presented that suggested the existing ammonia and copper criteria may not be sufficiently protective of freshwater mussels (including endangered species) and should be updated (made more stringent) using this new information. DEQ staff carefully reviewed all the studies and determined that there is reason to believe the ammonia criteria may need to be updated. However, EPA is currently reviewing these issues on a national level for ammonia and some of the same issues involving the interpretation of new toxicity data for freshwater mussels also apply to copper. EPA is scheduled to release a draft reassessment of the ammonia criteria in the fall of 2009. After EPA presents their recommendations concerning these issues, Virginia will be in a better position to determine how to address them. These issues are very complex and the impact of significantly lowered criteria could be very great, particularly to municipalities. Staff will revisit these issues after EPA publishes their reassessment of the ammonia criteria.

**Cyanide Criteria § 9 VAC 25-260-140:** The advisory committee investigated the potential for revising Virginia's water quality criteria for cyanide in both freshwater and saltwater based on a recent report (January 2007) produced on behalf of the Water Environment Research Foundation (WERF). The WERF report shows the potential changes to the freshwater criteria values for cyanide are less than  $\pm 8\%$  different from the current criteria values and these are not considered significant enough to warrant changing the established criteria. For saltwater, the proposed changes to the criteria are based primarily on new data from a site-specific criteria developed for Puget Sound in Washington State, and includes additional data for crabs native to the Pacific Ocean that are less sensitive to cyanide than the Atlantic crab species used in the original EPA criteria studies. Additional tests were conducted with an Atlantic species of crab, but at colder temperatures than the original EPA tests. No data are available for the blue crab species important to Virginia waters. Differences in sensitivity between Pacific coast species and the colder temperatures used in the newer tests resulted in significant variability among the tests results, much greater variability than allowed by EPA's guidelines for developing water quality criteria. Based on the excessive differences in sensitivity and the testing at colder temperatures which may have influenced the sensitivity of the tests, DEQ staff does not recommend using these data to amend the Virginia criteria at this time.

**Mixing Zones for Persistent Bioaccumulative Toxicants § 9 VAC 25-260-20:** Several stakeholders recommended that point source mixing zones be restricted for persistent bioaccumulative toxicants (PBTs). Some options presented were to restrict mixing zones for PBTs for all dischargers, for new dischargers only, or for just in endangered and threatened species waters. Much of the discussion with the advisory committee focused on polychlorinated biphenyls (PCBs), among the most widespread PBTs, and the cause of the largest number of toxic impaired waters in the Commonwealth. EPA has recently developed a low level analytical procedure for PCBs and DEQ has developed guidance for using this method in the development of Total Maximum Daily Loads [TMDLs] for PCB impaired waters. A PCB TMDL study has been completed for the tidal Potomac River and DEQ is also working on TMDLs for the Roanoke River, Bluestone River, Levisa Fork, James River and Elizabeth River. Using this new analytical method has resulted in finding PCBs in the effluents from point source dischargers. However, these are generally not considered the major sources of PCBs to the impaired waters. Diffuse sources, such as, legacy spills, abandoned industrial sites and closed landfills seem to be the largest contributors. In addition, setting permit limits for PCBs, with or without mixing zones, is not the management approach taken with point source dischargers in other states, nor what DEQ is using to implement the Potomac River TMDL. Instead, permits require the development and implantation of pollution minimization plans which appear

to be a more effective approach to track down and reduce PCB levels in effluents. Staff concluded that before pursuing mixing zone restrictions for PBTs, additional experience was needed from both the on-going TMDL studies and the use of pollution minimization plans. Also, further understanding is needed of the consequences associated with a requirement to prohibit mixing zones for PBTs. Staff will revisit the issue in a future Triennial Review process.

#### *Petition for Rulemaking*

#### **Town of Culpeper STP - Petition to Amend Nutrient Waste Load Allocations in 9 VAC 25-720-70.C. (Water Quality Management Planning Regulation, Rappahannock Basin).**

By letter dated 6/26/09, the Town of Culpeper petitioned for increased nutrient waste load allocations (WLAs) for their wastewater treatment plant, located in the Rappahannock River Basin, which is now under construction for upgrade and expansion. The existing plant has a design flow of 4.0 million gallons per day (MGD); the upgrade/expansion project will raise the capacity to 6.0 MGD and install state-of-the-art nutrient reduction technology, capable of annual average concentrations of 3.0 mg/l total nitrogen (TN) and 0.30 mg/l total phosphorus (TP). The project schedule shows completion on or before December 31, 2010. In late 2005, when nutrient WLAs were originally adopted in 9 VAC 25-720, Culpeper STP was rated at 3.0 MGD and a plant expansion to 4.5 MGD was claimed by the Town to be imminent. This expansion/upgrade project would alleviate high flows, exceeding 95% of the existing design flow for at least three consecutive months and caused in large part by excessive infiltration/inflow (I&I). Culpeper provided a reasonable assurance that the expansion would be complete by 12/31/10, and was assigned conditional WLAs based on a design flow of 4.5 MGD. If a Certificate to Operate (CTO) for the expanded plant is not secured by the 12/31/10 deadline, the WLAs will drop to values based on a design flow of 3.0 MGD. Rather than expanding to 4.5 MGD, Culpeper completed an interim expansion to 4.0 MGD along with improvements to the solids handling system (no nutrient reduction technology installed) and received a CTO on 6/12/08 for this facility. During the re-opened public comment period (July-August 2005) on the rulemaking to assign nutrient WLAs, the Town requested a further increase in the design flow basis to 6.0 MGD. The staff memorandum to the Board for their September 2005 meeting summarized the agency's position as follows:

*Town of Culpeper STP – WLAs currently based 4.5 MGD; request increase based on 6.0 MGD. Basis for WLAs remains unchanged. No expectation of CTO for expanded design flow by 2010, based on information provided. Town of Culpeper's request for increased capacity included an expectation to accommodate flows from surrounding portions of Culpeper County. As noted in response to comments from Culpeper County, the County has documented their intention to provide service to these areas, thus removing the need for this capacity in the Town's plant.*

Since the Board adopted nutrient WLAs in 2005 it has become difficult to assess the capacity needs and allocation requests from Town of Culpeper and Culpeper County in isolation – the localities must be considered together. The County's planned Mountain Run STP also received conditionally increased nutrient WLAs (from 1.5 to 2.5 MGD) to serve "a large commercial and mixed use development... projected to produce approximately 0.75 MGD. Mountain Run plant will also incorporate two currently permitted plants (Airpark plant and Elkwood plant), with plans for 2.5 MGD capacity to be on-line by 2010."

It should also be noted the Town received a WQIF construction grant in 2007 for the 6.0 MGD upgrade/expansion project, with eligibility for all nutrient reduction components pro-rated to 90% due to design flow in excess of what was deemed to be "reasonable and necessary" (4.5 MGD) for the project's 20 year design life. The reduced grant eligibility recognized excessive I&I and the apparent duplication of areas (the "Town Environs") claimed to be served by both the Town and County.

PETITION: Culpeper STP's existing nutrient WLAs, petition values, and requested increases are as follows:

	Design Flow (MGD)	TN Conc. (mg/l)	Total Nitrogen WLA (lbs/yr)	TP Conc. (mg/l)	Total Phosphorus WLA (lbs/yr)
Existing*	4.5	4.0	54,820	0.30	4,112

Petition	6.0	4.0	73,058	0.30	5,479
Difference	+ 1.5	No Change	+ 18,238	No Change	+ 1,367

\*NOTE: Town of Culpeper WWTP waste load allocations (WLAs) based on a design flow capacity of 4.5 million gallons per day (MGD). If plant is not certified to operate at 4.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.

#### CURRENT STATUS

- Agency Response to Petition for Rulemaking published in the Virginia Register on 8/3/09.
- Public Comment Period closed 8/24/09; two sets of comments received.

#### SUMMARY OF COMMENTS

1. Chesapeake Bay Foundation, Mike Gerel/Staff Scientist:
  - Town did not pursue increased WLAs during development of original WQMP allocations in 2005.
  - Increased point source discharges to impaired waters must not be permitted.
  - Based on rationale Board used to deny two similar requests (FWSA-Opequon STP, Waynesboro STP) this request should also be denied.
  - Increasing WLAs undermines the nutrient trading program.
  - Town and Culpeper County could collaborate to meet wastewater needs in this community (appears expansion is to serve areas also planned for service by the County's Mountain Run STP).
  - Expanded plant can meet existing WLAs using available technology.
2. Piedmont Environmental Council, Dan Holmes/Director of State Policy:
  - Town did not pursue a 6.0 MGD design flow during development of original WQMP allocations in 2005.
  - Town and Culpeper County are requesting capacity to service the same area (Culpeper Town Environs).

#### STAFF DISCUSSION

An important factor for the Board to use when considering amendments to nutrient WLAs is to avoid further nutrient discharge increases to impaired waters whenever possible to aid in meeting and maintaining water quality standards. The Town has the capability to meet its TN WLA by operating the upgraded nutrient reduction technology, now being installed, at its design intent up to a flow of 6.0 MGD. The TP WLA can be achieved at 6.0 MGD design flow through operation at 0.22 mg/l annual average, which is possible using available technology. Staff is concerned that with the County's 1.5 MGD design flow WLAs, at a minimum, for Mountain Run STP and their stated intention to build a 2.5 MGD plant (P&S approved, Certificate to Construct issued but project not yet bid), granting an additional 1.5 MGD capacity and associated WLA to the Town may be excessive for the area and the Rappahannock basin. There also appears to be an opportunity for a shared, regional approach to address the capacity needs of the Town and the County for future service areas that has not been fully explored. A Memorandum of Understanding has been signed and discussions have taken place between the localities on this and other issues facing the region, but no final solution has been agreed upon yet. Under current circumstances, the County has conditional WLAs for their stated needs and the Town has the technological capability to meet its WLAs at the 6.0 MGD design flow.

#### STAFF RECOMMENDATIONS

1. Staff recommends that the Board not initiate a rulemaking to increase nutrient WLAs for the Town of Culpeper, since the Town's request for the increased WLAs due to a plant expansion to 6.0 MGD under the original rulemaking was not recommended by the staff, and the Board adopted conditional WLAs for the Town based on a design flow of 4.5 MGD.
2. Direct staff to assist the Town, as needed and requested, in securing any shared WLA that may result from a regional approach with the County that consolidates allocations for new or expanded service areas.

#### **Louisa Co. - Zion Crossroads STP**

*Petition for Nutrient Waste Load Allocations in 9 VAC 25-720 (Water Quality Management Planning Regulation)*- Staff will recommend that the Board deny a petition from Louisa County, which requested nutrient waste load allocations (WLAs) in the Water Quality Management Planning (WQMP) Regulation

(9 VAC 25-720), for their Zion Crossroads wastewater treatment facility. When amendments to 9 VAC 25-720 were adopted in late 2005, “significant dischargers” were assigned nutrient WLAs, which included municipal wastewater plants with a design flow of 0.5 million gallons per day (MGD) or greater discharging to non-tidal waters in the Chesapeake Bay watershed. At that time, the Zion Crossroads plant (a discharger in the non-tidal portion of the York basin) was certified to operate at a 0.1 MGD permitted design flow. Therefore, the plant was not identified as a significant discharger and was not assigned nutrient WLAs. This determination did not constitute a case decision, as it was applied to every municipal wastewater plant in the Bay watershed identified as a non-significant discharger. Nutrient loads from “non-significant dischargers” are addressed in the 2005 Nutrient Credit Exchange law, by allowing for “permitted design capacity” (PDC) based on the facility’s discharge as of 7/1/05. This action effectively “held the line” on the non-significant dischargers’ nutrient loads, but did not assign WLAs in the WQMP Regulation. The law assigns a PDC load that cannot be exceeded, for a non-significant discharger that expands in the future, based on the plant’s certified design flow as of 7/1/05 and assumed concentrations of 18.7 mg/l nitrogen and 2.5 mg/l phosphorus. The rulemaking to assign WLAs did give consideration to some facilities that were actively expanding from “non-significant” to “significant” status, conditioned on having a Certificate to Operate (CTO) for the higher design flow by 12/31/10. The plants receiving these conditional allocations informed DEQ during the rulemaking of their intention to expand and provided reasonable assurance that the CTO would be secured by the deadline. Louisa County did not provide such notification at the time and has now petitioned the Board for allocations for their proposed expansion to 0.7 MGD, which the County claims will be substantially complete and have a CTO issued by 12/22/10. When nutrient WLAs were adopted, the DEQ Director was also authorized to receive any petition requesting amendment of the allocations on the Board’s behalf and, upon completion of the public comment period on the petition, if the recommendation would be to initiate a rulemaking, the DEQ Director was authorized to take that action. The DEQ Director was not authorized to deny a petition for rulemaking.

#### Rulemaking Status

- By letter dated 4/10/07, Louisa County petitioned for nutrient WLAs in the WQMP Regulation for their Zion Crossroads facility. The discharge permit contains flow tiers of 0.1 and 0.7 MGD. The plant currently has a Certificate to Operate (CTO) at 0.1 MGD and the County intends to expand to the higher flow tier, claiming the expansion will be completed and a CTO issued by 12/22/10. Allowable discharged nutrient loads (“permitted design capacity”) for the existing 0.1 MGD facility are:
  - TN = 5,695 lbs/yr (2,905 lbs/yr delivered load to tidal waters)
  - TP = 609 lbs/yr (365 lbs/yr delivered load)

The requested amendments are:

- TN = 12,785 lbs/yr; a 7,090 lbs/yr increase (delivered load inc. by 3,615 lbs/yr)
- TP = 1,492 lbs/yr; an 883 lbs/yr increase (delivered load inc. by 530 lbs/yr)
- The “Agency Response to Petition” was published in the Virginia Register on 5/28/07; public comment period ended 6/18/07. Summary of comments received:
  - Chesapeake Bay Foundation, Mike Gerel, VA Staff Scientist – petitioner’s requested nutrient WLAs based on the expanded 0.7 MGD flow tier should be denied; facility eligible to receive WLAs for permitted design capacity on 7/1/05 (0.1 MGD). The Commonwealth has already authorized WLAs for approximately 3,300,000 lbs total nitrogen and 300,000 lbs total phosphorus in excess of tributary strategy-allowed nutrient pollution loads (across VA’s entire Bay watershed); it is essential that only petitions that contain adequate justification are granted.
  - Louisa County Board of Supervisors – unanimously approved a resolution prior to the public comment period (5/7/07; letter received 5/22/07) supporting the petition, stating that “*equity requires that waste load allocations be authorized...on the same basis as the prior authorizations for other permitted ‘significant’ facilities*”.

The Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register on 2/4/08, a public meeting was held 3/7/08, and the public comment period ended 3/10/08. Summary of comments received:



- On behalf of the Louisa County Board of Supervisors, County Administrator Lee Lintecum supported the petition.
- Twelve individuals submitted similar comments (Brian Balogh, Kathy Craig, Dennis Cronin, Penny Goldman, Richard Keith, Martha McIntire, Renee and David O’Leary, Robin Patton, Amanda Welch, Karen and Brent Whitlock) – opposed to the requested amendments; concerned about continued challenges in effort to save the Bay if introduction of additional pollutants is allowed; water quality in the area is already adversely impacted (nitrogen and phosphorus screening values exceeded); downstream conservation easements on farmland will be affected by the need to find nonpoint source offsets to balance increased point source loads; water reuse for irrigation should be implemented; concerned about the compliance history of facility; State must support citizen stewardship efforts and “hold the line” on nutrient discharges; amending WLA will adversely impact property values.
- Ray Ely, The Historic Green Springs, Inc. – described this Historical Landmark District and numerous conservation easements (preserving agricultural heritage) held by the National Park Service. Consideration of the requested waste load allocations cannot be made in isolation of the impacts to this forested agricultural community within which the landowners have made land-and-water conservation a lifestyle choice, all to the benefit of the health of Chesapeake Bay. Postpone regulatory action and instead develop a comprehensive management approach to accommodate growth occurring in Louisa County, including creation of a regional water and wastewater authority.
- Mike Gerel, Chesapeake Bay Foundation staff scientist:
  - York River basin nutrient allocation is over-allocated in violation of state and federal laws and regulations.
  - Additional WLAs requested by the facility will cause or contribute to an excursion above water quality standards and thus violates state and federal laws and regulations.
  - Additional WLAs requested by the facility contravene the WQMP Regulation.
  - Chesapeake Bay Nutrient Credit Exchange Program and State Water Control Law and their regulations already mandate a process for expanding dischargers to receive appropriate WLAs.
  - A “hard” nutrient pollution cap is necessary to support nutrient trading.
  - The Commonwealth must ensure any amendments to the regulations are protective of water quality prior to approval, and avoid delaying compliance until some future date; there have already been too many delays.
- Tammy Belinsky and David Bailey, The Environmental Law Group (counsel for Historic Green Springs, Inc.) - deny petition and maintain nutrient WLAs as currently listed in 9 VAC 25-720.
  - Proposal fails to meet the intent of the Chesapeake Bay Strategy, the Virginia Water Quality Law, and the Clean Water Act;
  - Our clients fail to understand how increasing the loads of nitrogen and phosphorus from point sources into Camp Creek, the York River basin, and the Chesapeake Bay will contribute to the protection of water quality;
  - Requested action is to increase pollution to surface waters, and therefore no protection is proposed by the regulatory amendment;
  - Need to consider the pending permit renewal and modification in the allocation regulatory process;
  - Concerned about the inequities of the shell-game-styled nutrient-management that would result from the grant of the petition;
  - There are viable alternatives to increased wastewater loading to Camp Creek and the York River basin; and,
  - Must consider petition in the context of long-term planning needs in the region.
- VPDES permit reissuance was ongoing during the same period as the NOIRA process. It was apparent at the NOIRA public meeting there was confusion and concern about permit limits and the

perceived overlap with the rulemaking for WLAs. Therefore, DEQ decided in April 2008 to interrupt the rulemaking to allow time for the SWCB to act on VPDES permit reissuance.

- SWCB approved the reissued permit on 12/4/08 (citizen group filed notice of appeal after Board action; court decision pending).
- NOIRA Technical Advisory Committee formed and TAC meeting held on 6/4/09.
  - Concerns were raised by some members about whether or not there was a compelling, imminent need for plant expansion. The County was given an opportunity to provide additional details and information about the expansion status and justification for increased design flow after the TAC meeting. County staff provided an updated project schedule, showing:
    - Design submitted for DEQ review/approval 7/24/09 (plans and specifications have not yet been submitted).
    - DEQ approval of design 9/23/09.
    - Commence construction 11/5/09; substantial completion by 12/22/10 with CTO issuance.
    - Final completion 3/23/11.
  - Concerns were also raised about past plant performance and violations; potential for water quality impacts downstream due to increased flow and pollutant loads.
  - It was noted the reissued VPDES permit was written without reliance on the requested nutrient WLA increase, containing these provisions:
    - Discharged loads for permitted design capacity (PDC) of 0.1 MGD plant maintained, regardless of future expansion; TN = 5,695 lbs/yr and TP = 609 lbs/yr.
    - With system proposed for installation by County and capable of TN = 6.0 mg/l and TP = 0.7 mg/l, plant flow can increase to 0.311 MGD and still maintain PDC.
    - To operate at flows above 0.311 MGD, CTO for reclamation/reuse system will be secured. A detailed Reclaimed Water Management Plan and Soil-Moisture Monitoring Plan shall be submitted for approval 90 days prior to commencing reuse or when the monthly average flow reaches 279,000 gpd (90% of 311,000 gpd).
    - When monthly flows reach 0.311 MGD, annual nutrient loads above PDC must be offset, subject to a DEQ-approved trading contract.
    - At 0.7 MGD design flow, plant must meet state-of-the-art nutrient reduction levels; TN = 3.0 mg/l and TP = 0.3 mg/l.
  - It was also noted that a nearby golf course is a potential and likely customer for reclaimed wastewater to be used for irrigation.
  - The TAC discussed the possibility of Louisa County meeting its nutrient WLAs by “bubbling” the Zion Crossroads discharge with the County’s capacity at the Louisa County Regional wastewater plant (jointly owned with the Town of Louisa). After the TAC meeting, the County stated that the facilities are not commonly owned (Zion Crossroads plant is owned by the Louisa County Water Authority) and the Town of Louisa doesn’t wish to bubble its permitted design capacity from Louisa Regional.
  - TAC members were briefed on the upcoming Chesapeake Bay TMDL, scheduled to be produced by EPA by December 2010.

Staff recommends that the Board deny the petition, based on these factors:

1. Louisa County did not pursue the increased WLAs due to a plant expansion under the original rulemaking adopted by the Board in 2005. Further increases should be avoided when possible to aid in meeting and maintaining water quality standards. In addition, the County has the capability to meet its TN WLA by operating available nutrient reduction technology (state of the art treatment, TN = 3.0 mg/l annual average) up to a flow of 0.62 MGD. At a design flow of 0.7 MGD, the County would need to acquire 700 lbs/yr of TN offsets under the Nutrient Credit Exchange Program. The TN offset could also be achieved through reclamation/reuse, thus reducing the surface water discharge. The TP WLA can be achieved at 0.7 MGD design flow through operation at 0.29 mg/l annual average, which is possible using available technology.
2. Louisa County has not provided a reasonable assurance that the CTO for the expanded plant will be secured by 12/31/10. Design documents were not submitted by the date shown on the County’s revised

schedule (due 3 months ago), and the project does not even have an approved Preliminary Engineering Report (the PER is a precursor to design plans and specifications). The Zion Crossroads upgrade/expansion project PER was submitted 9/10/07, revised 2/26/08, commented on by DEQ 3/27/08, and returned to the County 11/13/08. Current review status is “inactive”.

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*Significant Noncompliance Report*

There were no new facilities reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter January 1<sup>st</sup> through March 31, 2009.

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*Consent Special Order (VPDES Permit Program)*

**Town of Appomattox (Appomattox Co.) - Consent Special Order without a civil charge**

The facility's VPDES Permit was re-issued on October 18, 2004, containing a 4-year schedule of compliance in Part I.D. of the Permit to achieve final compliance with zinc limitations of 49 µg/L. The Town submitted a Compliance Action Plan (CAP) to the Department on January 10, 2005, in accordance with the deadline contained in the schedule. The CAP described the Town's work towards compliance by chemical addition to raise pH and sequester zinc in the potable water distribution system, and flushing both the distribution and sewer collection system to help remove residues and solids. The Town also submitted quarterly Progress Reports as required by the schedule to track efforts made towards compliance. Sampling and analysis of residential septic tank waste received at the plant revealed high levels of zinc. The Town implemented source control by no longer accepting hauled waste from septic tanks at the treatment plant. The plant utilizes reed bed technology to process the sludge generated from wastewater treatment. Analysis of the filtrate generated by the reed beds also revealed high levels of zinc being recirculated to the head of the plant. The beds were cleaned in the summer of 2007 by removing as much of the sludge accumulation as possible. The Town began monitoring the plant's influent, effluent, and hardness in 2007. From January 1 to July 29, 2007, the average effluent zinc value was 217 µg/l. Magnesium Hydroxide was introduced at the plant as part of a chemical treatment pilot study, but was halted in March '09 due to bulking sludge and high TSS issues. In October, 2008 the Town began reporting zinc violations on the facility's DMR. The maximum monthly zinc concentrations reported on the DMR have been 90.5, 113, 194, 199, 212, and 226 µg/l respectively. The Town is currently feeding a 3% lime slurry at the plant, and began the use of a blended phosphate chemical at the Town's potable water supply wells in order to sequester the zinc present in the distribution system. As a point of reference, the National Secondary Drinking Water Standard for zinc is 5 mg/l – as previously indicated, the wastewater treatment facility's Permit limit is 49 µg/l. The proposed enforcement action contains a Schedule of Compliance which gives the Town the opportunity to conduct a Site-Specific Water Effect Ratio (SSWER) study, which reflects local environmental conditions. A site-specific criterion is intended to come closer than the national criterion to providing the intended level of protection to the aquatic life at the site by factoring in the biological and chemical conditions at the site. The Schedule specifies a timeline for performing the SSWER study, allowances for protocols approval by DEQ, sampling and testing, report generation and submission, and final review by DEQ and EPA staff. Permit modification, public notice period, and processing by staff must also be factored in as well. The Schedule also contains deadlines for submission of a Plan of Action (POA) to address alternative methods to achieve compliance with the zinc limits contained in the Permit if the SSWER study determines that current Permit limits are appropriate. It also addresses reporting requirements, O & M practices, and a final compliance date for zinc. The Order contains an interim zinc limit, based on the 95<sup>th</sup> percentile of effluent monitoring data and Best Professional Judgment, in order to allow the Town the opportunity to perform the SSWER and, if necessary, implement the items contained in the POA and return to compliance. The Town has been working diligently with their engineering consultants to chemically treat the potable water supply and reduce the leaching of zinc from the distribution system. Numerous compliance options have been tried and rejected due to a combination of ineffectiveness, total costs, or toxicity to the treatment plant. The proposed Order requires the Town to explore additional compliance options and gives a deadline of two years from the effective date of the Order to perform a Site-Specific Water Effect Ratio (SSWER) for the receiving stream, and contains an interim zinc effluent limit of 223 µg/l. An additional option currently

being explored by the Town involves the installation of a potable water supply line from Concord to the Town, with water supplied by the Campbell County Utility Service Authority (CCUSA) from a surface water source. Staff does not recommend a civil charge in conjunction with the proposed enforcement action. The required public notice period started on September 14, 2009, and is scheduled to end on October 15, 2009. The Board will be advised of any comments received during the comment period prior to the October 26<sup>th</sup> meeting. The proposed Order does not contain schedule of compliance milestones prior to issuance. Civil Charge: \$0

**Rappahannock County Water and Sewer Authority/Sperryville STP Consent Special Order without a civil charge**

The Rappahannock County Water and Sewer Authority (Authority) owns and operates the Town of Sperryville STP (STP) located at 3751 Sperryville Pike, Sperryville in Rappahannock County, Virginia. The STP is a low flow treatment plant, with a design flow of 0.055 MGD that has one discharge point that goes into Thornton River. The Town has experienced violations of Permit Condition Part I A(1) for Ammonia as N, and Total Recoverable Copper. In response to the effluent violations DEQ sent the Authority three Warning Letters (WLs) and two Notices of Violation (NOVs). The WLs were issued to the Authority for the February 2008, May 2008, August 2008 monitoring periods for exceeding the weekly maximum and monthly average Permit limits for concentration for Total Recoverable Copper. The NOVs were issued for the November 2008 monitoring period for exceeding the weekly maximum and monthly average Permit limits for concentration for Ammonia as N and for exceeding weekly maximum and monthly average Permit limits for concentration for Total Recoverable Copper and for the December 2008 to February 2009 monitoring period for the submittal of an incomplete DMR and the failure to report the Total Recoverable Copper analysis. On January 26, 2009, Environmental Systems Service, Ltd (ESS), the Authority's consultant, sent a NOV response letter to DEQ on behalf of the Authority. ESS explained that the Ammonia as N violation was due to leaves that fell into the treatment plant and had accumulated in the clarifier, causing a blockage of the activated sludge return to the clarifier. The leaves were promptly cleaned out. ESS proposed that netting over the units will be used to avoid further blockage concerns. ESS also explained that the Total Recoverable Copper violations were due to the fact the STP was neither designed nor able to remove metals. In an attempt to solve the metals issue, ESS proposed studying other treatment techniques including the use of chemical precipitation additives to reduce the Copper levels of the STP discharge. On February 3, 2009, Authority staff and ESS, met with DEQ staff to discuss the January 9, 2009, NOV and methods to ensure future compliance with permitted limits. The proposed use of chemical additives was discussed. In addition to plant modifications and a change in operations, the use of a Water Effects Ratio (WER) study was proposed. The study would determine the relative metals concentration in the receiving stream and the effects of the STP's discharge on that aquatic system. Depending on the results of the WER study, the Permit limits could be adjusted to a higher limit for the STP discharge. In March 2009, DEQ met with ESS to discuss the feasibility of the WER study. After reviewing the data, DEQ indicated that there was potential to achieve revised Total Recoverable Copper limits. After the meeting, ESS requested authorization from the Authority to conduct the WER study. On May 26, 2009, ESS advised DEQ that the Authority had authorized ESS to perform the WER study. The requirement is incorporated in the Appendix A of the Order. The Order requires the Authority to conduct a WER study to determine if the permit limits for Total Recoverable Copper are appropriate. If the WER study is successful, then the Authority shall apply for a modification of the VPDES Permit to reflect this change. If the Study is unsuccessful, the Authority shall investigate and implement an alternative method of compliance with the Permit limits. In addition to the WER study, the Authority shall install netting over the treatment units to avoid blockage by falling leaves. The order was signed on 7/22/09. Civil Charge: \$0

**Hopewell Regional WTF & Sanitary Sewer System - Consent Special Order with a civil charge**

The City of Hopewell ("the City") owns and operates the Hopewell Regional Wastewater Treatment Facility ("HRWTF"), and is subject to VPDES Permit No. VA0066630. The City's sanitary sewer system ("System") collects and transports domestic wastewater and includes approximately 130 miles of sewer

lines. In November 2006, HRWTF staff took over responsibility for the System from Department of Public Works staff. At the time of the transfer, the System was in a state of disrepair. Due to pipe breaks, electrical outages, storm events, and infiltration and inflow in the System, untreated sewage has been and is being occasionally discharged from various locations in the System into unnamed tributaries to Bailey's Creek, Cattail Creek, the Appomattox River and the James River, as well as the main stems of Bailey's Creek, Cattail Creek, and Cabin Creek. Since 1999, there have been 161 documented occurrences of System overflows. On March 16, 2009, DEQ issued a Warning Letter to HRWTF, citing System overflows that occurred during August, September, and December 2008. The Warning Letter also cited January 2009 violations of the effluent limitations for the following parameters: chemical biological oxygen demand ("CBOD<sub>5</sub>") (average and maximum loading and average and maximum concentration) and average ammonia as nitrogen concentration, as well as a December 2008 violation of the average ammonia as nitrogen concentration effluent limitation. Facility staff indicated that the ammonia exceedences in December 2008 and January 2009 were due to higher than normal loadings of total Kjeldahl nitrogen, and the CBOD<sub>5</sub> exceedences were due to a Plant upset that began on January 5, 2009. The unit processes remained in service and the biomass was reseeded. The Facility has since returned to compliance. HRWTF began the process to address the System overflows in 2007, and has begun to complete repairs on the System. The City also plans to upgrade the First Street, Baileys Creek, and Bear Creek pump stations. In addition, the Primary Plant and Primary Plant Pump Station will be abandoned. The studies, upgrades, and other construction are estimated to cost over \$15 million and should eliminate overflows. The order was signed on 8/21/09. Civil charge: \$15,645.

**Standex Engraving LLC (Henrico Co.) - Consent Special Order without a civil charge**

This facility has historically been operated as a rotogravure plating and engraving operation by previous owner/operators, and groundwater contamination has been acknowledged by the previous owner, Vantec, Inc. Vantec is pursuing groundwater remediation under the DEQ Voluntary Remediation Program. Standex has operated a rotogravure plating and engraving operation at the subject facility since June 2003, and purchased the facility in 2009. On July 11, 2007, DEQ staff conducted an inspection of the facility, which revealed that stormwater samples taken during the 2004-05, 2005-06, and 2006-07 monitoring periods exceeded the benchmarks in the VPDES industrial stormwater general permit for zinc, aluminum, and iron. Benchmark exceedences do not constitute violations of the Permit, but do signal that a regulated party may need to reevaluate its Stormwater Pollution Prevention Plan. The contamination observed at the facility is likely due to conditions that existed at the facility prior to Standex's ownership; however, Standex has voluntarily proposed to investigate and attempt to remediate potential sources of stormwater contamination on the site. Initial investigations by Standex have indicated that the stormwater contamination can likely be eliminated. In recognition of the good faith proposal by Standex, DEQ is agreeable to allowing Standex up to 4 years to remediate potential sources of the stormwater contamination, while continuing to operate under its VPDES industrial stormwater general permit. Standex has already completed the first phase of remediation activities at the site, and has completed additional activities that were not originally part of the first phase proposal. Standex has begun monitoring stormwater discharges to determine if the activities were successful at alleviating stormwater contamination. If Standex can show 12 consecutive stormwater samples in which benchmarks are not exceeded in any one sample, Standex is relieved of further stormwater evaluation and remedial activities. If benchmarks are exceeded in any one sample, Standex will complete a second phase of remedial activities, as described in the Consent Order, and will begin a second round of stormwater monitoring. Standex may at any time elect to apply for an Individual VPDES Permit for its stormwater discharges, and DEQ may require an application for an Individual VPDES Permit if, after 4 years of remedial activities and sampling, Standex cannot attain 12 consecutive stormwater samples that meet permit benchmarks. The Consent Order does not require payment of a civil charge because Standex did not violate the Permit. The order was signed on 6/29/09. Civil Charge: \$0

**Tyson Foods, Inc. d/b/a Tyson Foods, Inc. (Hanover Co.)****Consent Special Order with a civil charge**

Tyson owns and operates a wastewater treatment plant at its facility in Glen Allen, Virginia. The Plant is subject to VPDES Permit No. VA0004031, which was issued on November 15, 2005. On December 4, 2008, DEQ staff observed a fish kill in an unnamed tributary downstream of the Tyson plant. Staff from the Department of Game and Inland Fisheries counted a total of 1,661 dead fish. DEQ staff conducted water quality monitoring at and near the effluent discharge from the Tyson Plant. The dissolved oxygen concentration upstream of the effluent discharge was 3.0 parts per million (“ppm”) and downstream of the effluent discharge was 0.3 ppm. The dissolved oxygen concentration of the effluent itself was 0.4 ppm. The daily minimum effluent dissolved oxygen concentration allowed by the Permit is 5.0 ppm. On March 13, 2009, DEQ issued Notice of Violation number W2009-03-P-0006 to Tyson for failing to comply with the Permit and for altering the chemical properties of state waters and making them detrimental to animal or aquatic life. The same day as the fish kill was observed, Tyson corrected the issues in its treatment plant which caused the effluent limit violations. Tyson has also initiated measures to prevent reoccurrence. The cost of the corrections was approximately \$8,400. The order was signed on 8/24/09. Civil Charge: \$12,155 (\$9,116 offset by SEP).

**Strata Mine Services, Inc. (Russell Co.) - Consent Special Order with a civil charge**

Strata Mine Services, Inc. operates a Facility, located at 4891 Swords Creek Road, Swords Creek, Virginia, supplying specialized products and turnkey installation of ventilation seals, overcasts, gunite and cavity fillers to the mining industry. The Company also provides concrete pumping and general construction services. In response to a report of a fish kill received on September 25, 2008 (IR No. 2009-S-0114), DEQ SWRO staff conducted a field investigation at Swords Creek in Russell County the following day, September 26, 2008. That investigation revealed the following: a) dead fish were observed for approximately 0.5 mile in Swords Creek downstream from the Facility; b) visible foam was noted on the surface of Swords Creek, up to a distance of 1.2 miles downstream from the Facility; c) visible foam was present both in a storm drain drop inlet and the storm drain discharge point on the bank of Swords Creek, at the Facility; and d) no dead fish or visible foam was seen in/on the surface of Swords Creek upstream from the Facility. Staff counted 2,988 dead fish in Swords Creek. Per an on-site interview with an employee, the Company used Ferdel B.S., an alkaline cleaner, in its operations at the Facility. Per the MSDS sheet for Ferdel B.S., it must not reach bodies of water or a drainage ditch undiluted or unneutralized. A high pH value harms aquatic organisms. It appears that aqueous Ferdel B.S. was disposed of by release into a floor drain inside the building. The floor drain apparently discharged into an outside storm drain, which then discharged into Swords Creek. Company personnel have stated that Ferdel B.S. is no longer used at the Facility. Per written correspondence, the Company has documented that the floor drains are now sealed. On November 6, 2008, DEQ SWRO staff conducted a Focused Compliance Inspection (“FCI”), a type of hazardous waste inspection, of the Facility. On November 12, 2008, DEQ returned to the Facility for additional information. The Facility generates used oil. Some used oil containers were bulging. Some used oil containers were observed to be leaking. Used oil containers holding used oil were observed that were not labeled with the words “used oil”. During the follow-up site visit November 12, 2008, it was observed that oil released from these containers had been cleaned up. All used oil containers present at the time of inspection have since been transported for disposal. One container now in use is labeled with the words “used oil”. DEQ staff issued a “Request for Information” letter to the Company on December 15, 2008. Per inventory figures received from the Company’s consultant, the quantity of hazardous waste stored on site at the Facility categorize the Company as a SQG (545.45 KG of hazardous waste reported, largely Rocsil catalyst and resin, mine safety products accumulated over time). However, the Company did not have an EPA Identification Number at the time of the inspection. The Company applied for, and an EPA Identification Number (VAR000516872), was issued on November 24, 2008. Strata hired an environmental consulting firm to oversee proper categorization, and shipping for disposal of all hazardous waste on site at the Facility had been completed prior to DEQ staff meeting with Strata personnel on-site on January 21, 2009. Per manifests submitted, shipping occurred on January 12, 2009 and January 20, 2009. No “accumulation

start date” was observed on hazardous waste containers, as is required of SQG. Containers of hazardous waste were not labeled or marked clearly with the words “Hazardous Waste” while being accumulated, as is required of SQG. Containerized materials were observed and documented as being stored outside, on uncovered concrete storage pads at the Facility. Evidence of leakage and/or spills was apparent. However, during the follow-up site visit November 12, 2008, it was observed that spills had been cleaned up and containerized. DEQ Staff met with Company officials at the Facility on January 21, 2009. A Notice of Violation was issued to the Company on February 3, 2009. The order was signed on 7/22/09. Civil charge: \$24,000 (\$15,600.00 of this amount is related to the water violations; \$8,400.00 due to the hazardous waste violations).

#### **Lyon Shipyard, Inc. (Norfolk) - Consent Special Order with a civil charge**

Lyon Shipyard, Inc. (“Lyon”) operates a facility on Claiborne Avenue in the City of Norfolk at which it provides full-service repair and maintenance of ships and vessels (“facility”). Ships and vessels being serviced at the facility are mounted on either one of two marine railways (“MRWs”), which are used to haul vessels out of the water. One of the MRWs is a conventional system that hauls the vessel landward of the high tide line. With the other MRW (referred to as a “Crandall”) the ship or vessel to be serviced is mounted on a large submerged platform that is pulled landward by heavy chains along rails mounted on an inclined concrete frame that extends into State waters. When fully deployed, the platform, supported by the concrete frame, is suspended above State waters. DEQ issued Virginia Pollutant Discharge Elimination System (“VPDES”) Permit #VA0004405 (“Permit”) to Norfolk Shiprepair & Drydock Company, Incorporated (“Norfolk Shiprepair”) on September 21, 2004; it expired on September 20, 2009. The Permit was modified on June 1, 2007, to reflect that Lyon had acquired the facility from Norfolk Shiprepair. Lyon has submitted a timely application to renew the Permit, which has been administratively extended pending regulatory review. The Permit authorizes Lyon to discharge wastewater for MRW operations and process wastewater associated with vessel repair and/or maintenance from two industrial outfalls corresponding to the Crandall and conventional MRWs and to discharge storm water from three storm water outfalls. Among other things, the Permit requires Lyon to comply with Best Management Practices (“BMPs”) detailed in the Permit and to develop and implement a storm water pollution prevention plan (“SWP3”). The Permit also prohibits the discharge of pollutants into State water except in compliance with the Permit. On February 21, 2008, DEQ compliance staff (“staff”) conducted an inspection of the facility and observed a long-reach excavator positioned on a bulkhead adjacent to the Crandall MRW excavating spent abrasive blast material (“ABM”) and other subaqueous material from under State waters between the bulkhead and the Crandall MRW frame and depositing the excavated material on the bulkhead adjacent to State waters. A review of DEQ files revealed that Lyon did not have a Virginia Water Protection (“VWP”) permit to excavate in State waters. Staff also observed Lyon employees shoveling spent ABM from the Crandall MRW frame into State waters. Lyon had not reported this discharge to DEQ as required by the VPDES Permit. That inspection also revealed the following: failure to follow BMPs respecting the management of ABM, paint cans, and other waste material; failure to complete annual toxicity screening and a weekly BMP audit; an incomplete and unsigned and uncertified SWP3; and an incomplete annual comprehensive site compliance evaluation (“CSCE”) all of which were deficiencies in VPDES Permit compliance. Staff returned to the facility on February 22, 2008, and observed Lyon employees washing spent ABM from the Crandall MRW frame into State waters with a hose. This discharge also had not been reported to DEQ. On April 20, 2008, DEQ issued a Notice of Violation (“NOV”) for excavating in State waters and for depositing excavated material adjacent to State waters without a VWP permit, for the unpermitted discharges into State waters, and for the SWP3 deficiencies. Lyon submitted Joint Permit Application No. 08-0522 on March 17, 2008, to perform maintenance dredging at the facility including in the vicinity of the Crandall MRW. The Order would require Lyon to pay a civil charge within 30 days of the effective date of the Order. Lyon has addressed all VPDES Permit deficiencies. To ensure compliance with the Permit, and to improve the quality of storm water discharges from the facility, the Order also requires Lyon to submit an updated SWP3, which may be a stand-alone document or be combined with the SWP3 for Lyon’s adjacent Brown Avenue facility. The Order would also prohibit Lyon from dredging, filling, or discharging any pollutant

into or adjacent to State waters without an appropriate permit. The Order was signed on July 2, 2009. Civil Charge: \$23,184.

**Sandy Bottom Materials, Inc. (Suffolk) - Consent Special Order with a civil charge**

Sandy Bottom Materials, Inc. ("Sandy Bottom Materials") operated an open-pit sand, clay and silt mine ("facility") in the City of Suffolk, Virginia. Storm water discharges from the facility are subject to the Permit through Registration No. VAR840194, which was effective August 17, 2007, and expired June 30, 2009, and which was reissued July 1, 2009, and expires June 30, 2014. The Permit authorizes Sandy Bottom Materials to discharge to surface waters process wastewater commingled with storm water associated with mining activities under conditions outlined in the Permit. As part of the Permit, Sandy Bottom Materials is required to provide and comply with a Storm Water Pollution Prevention Plan ("SWP3") for the facility. The facility is also permitted by the Virginia Department of Mines, Minerals and Energy ("DMME"). A DMME inspector reported to DEQ possible uncontrolled discharges of sediment to State waters from two locations on or near the facility. DEQ compliance staff ("staff") conducted a site inspection on August 14, 2008, and confirmed the apparent uncontrolled discharge of sediment due to uncontrolled storm-water runoff from the facility to a tributary to Chuckatuck Creek and adjacent wetlands on the north side of the facility and from a large stockpile of soil to the east of the facility into another tributary to Chuckatuck Creek and adjacent wetlands. Staff estimated that a total of about 1,180 linear feet of stream and 0.92 acre of wetlands had been impacted. A review of DEQ files confirmed that a Virginia Water Protection ("VWP") permit had not been issued for wetland impacts on the property. Staff also noted during the August 14, 2008, site inspection that the facility SWP3 and associated records were not available at the facility as required by the Permit. The SWP3 that was subsequently provided was not dated, signed, or certified and was missing several components required by the Permit. On September 19, 2008, DEQ issued a Notice of Violation ("NOV") for impacting wetlands without a VWP permit and for the SWP3 deficiencies. In response, Sandy Bottom Materials submitted a draft SWP3 on October 1, 2008, that was dated, signed and certified and that contained all components required by the Permit. Sandy Bottom Materials also asserted that it had installed additional erosion and sediment controls (berms, silt fencing, re-grading, seeding and matting) to protect the tributary and adjacent wetlands on the north side of the facility and between the soil pile to the east of the facility and the other tributary and adjacent wetlands and had begun relocating the soil pile away from the tributary and adjacent wetlands. A site visit by DEQ staff confirmed these assertions. Relocation of the soil pile has been completed. The soil is being used for mine reclamation. The facility and the large stockpile of soil to the east of the facility are situated on property owned by a third party. The facility had been operated pursuant to a written agreement with the previous land owner, now deceased. The heirs of the deceased former land owner initiated a legal action to terminate the written agreement. That legal action resulted in a settlement that terminates Sandy Bottom Materials' access to the property except for limited purposes, including mine reclamation and complying with any other requirement of a State agency. Consequently, mining operations have ceased and reclamation activities, within the regulatory purview of DMME, are ongoing and should be concluded in early 2010. The Order would require Sandy Bottom Materials to pay a civil charge in twelve monthly installments with the first installment due within 30 days of the effective date of the Order and to submit a corrective action plan and schedule to establish and maintain a permanent, vegetated berm between the former site of the soil pile to the east of the facility and the adjacent tributary, and re-grade and re-vegetate the former site of the soil pile to its original contours. The Order would also require Sandy Bottom Materials to maintain erosion and sediment controls put in place to protect the northern tributary from further impacts. The Order was signed on August 24, 2009. Civil Charge: \$25,480.

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*Consent Special Orders (VWP Permit Program)*

**Pro-Line Performance, Inc. (Franklin Co.) - Consent Special Order with a civil charge**

The site is located on an unnamed tributary ("UT") of Teels Creek, located in the Roanoke River drainage basin, Franklin County, Virginia. The site is authorized by VWP General Permit # WP4-08-1052 and the permit holder is Pro-Line Performance, Inc ("Pro-Line"). The permit authorizes Pro-Line, for the purpose



of constructing a retail trailer sales lot and associated infrastructure, to permanently impact 297 linear feet with no wetland impact. The authorized impact area is listed in the Joint Permit Application. On January 30, 2009, Department compliance staff conducted an announced Virginia Water Protection (VWP) Permit inspection at the above referenced site. Department compliance staff inspected the site in response to a notification from Franklin County staff that the site was under grade and work appeared to be occurring in the UT of Teels Creek. Based upon the inspection, Department compliance staff observed that approximately 466 linear feet of the UT of Teels Creek has been adversely affected by grading of the stream bank, including the removal of the ordinary high water mark and deposition of sediment in the stream bed in association with the grading activity. A review of information indicates that the impacts occurred between January 24, 2009 and January 26, 2009. On February 11, 2009, the Department received a proposed corrective action plan ("CAP") for stabilizing the bed and banks of the UT of Teels Creek on the site and the Department approved the CAP on February 17, 2009. As a result of the inspection, the Department issued a Notice of Violation to Pro-Line Performance, Inc., on February 12, 2009. The impacted stream was stabilized on March 12, 2009 and the CAP was successfully implemented on June 10, 2009. The Order before the Board assesses a civil charge to Pro-Line for the unauthorized impacts to the unnamed tributary of Teels Creek. The Order also requires Pro-Line to monitor the success of the implemented corrective action plan and make the necessary vegetative replacements until such time that the stream bank has been restored to a natural condition. The order was signed on 8/26/09. Civil Charge: \$10,920

**NVP, Inc. for Ewell's Mill Development Project (Prince William Co.)**

**Consent Special Order with a civil charge**

The Ewell's Mill Project consists of the construction of single-family homes with associated infrastructure on an approximately 97 acre parcel. The permittee for the Ewell's Mill subdivision is NVP, Inc. (NVP). The project site is located on Spriggs Road (Rt. 643) approximately one mile north of its intersection with Dumfries Road (Rt. 234) in Prince William County (PWC), Virginia. A Virginia Water Protection (VWP) General Permit Authorization was granted on December 14, 2006. Members of DEQ staff conducted an inspection of the project site on March 13, 2008, and conducted a compliance review of the file on May 28, 2008. Based on a review of DEQ files on May 28, 2008, and a site inspection completed on March 13, 2008, DEQ discovered a temporary impact of 20 linear feet of perennial stream had occurred as a result of the installation of a sanitary sewer utility line in Powell's Creek. The impact caused a temporary increase in turbidity of the stream and the impact was restored once the utility work was completed. During the March 13, 2008 inspection, staff also observed 31 linear feet of intermittent stream channel impacts associated with the placement of rip rap in the stream channel. This impact was the result of the contractor, after installation of a utility line, using rip rap and rubble in an effort to stabilize the channel. In addition, 294 linear feet of intermittent stream channel associated with the filling and relocation of the stream connected to the stormwater retention pond was permanently impacted. The relocation was a result of NVP's response to the County's statement that the stormwater conveyance and associated easement could not be located within the adjacent residential lots and therefore NVP determined that the stream channel would be relocated. A review of DEQ files revealed that a planned change request was not received, and that these impacts were not authorized. Based on inspection photos taken by members of the Department of Conservation and Recreation (DCR) staff, and received by DEQ in an email on March 12, 2008, it appears that heavy machinery was used to complete work within Powell's Creek. Upon review of the DEQ files, no request or approval via a permit to use heavy machinery in a stream channel was received. As a result of the DEQ inspection and the file review a Notice of Violation (NOV) was issued to NVP by DEQ on June 2, 2008. The NOV cited alleged violations of VWP General Permit, including both temporary and permanent impacts to the stream channel and the unauthorized use of heavy machinery. NVP, through its consultant, Burgess & Niple, Inc. submitted a final plan detailing the resolution of the unauthorized permanent impacts through a DEQ approved relocation of the stream channel using a different footprint. The relocation of the stream and associated work will cover the total 325 linear feet of permanent impacts. The Order requires NVP to: commence the stream relocation work in accordance with the DEQ approved stream relocation plan

detailing the relocation of the impacted stream channel and submit monitoring reports to demonstrate successful relocation. The total cost of this relocation project will be approximately \$130,000. The order was signed on 8/19/09. Civil Charge: \$25,000.

**Mountain Run Golf, Inc. & Mountain Run, LLC (Hanover Co.)**

**Consent Special Order without a civil charge**

On July 18, 2001, DEQ issued VWP Permit No. 00-0194 ("the Permit") to Mountain Run, LLC, for the construction of a golf course and surrounding residential development. Mountain Run Golf, Inc. owns the property on which the golf course is located. Mountain Run, LLC was the company which developed the property. The permit required the on-site creation of 1.52 acres of forested wetlands as mitigation for the wetland impacts. On August 26, 2008, DEQ Piedmont Regional Office staff conducted an inspection of the Site. Staff observed a portable pump with an 8 inch diameter intake structure withdrawing water from the South Anna River; the withdrawn water was used for irrigation. The Permit did not authorize a water withdrawal from the impoundment or the South Anna River. A review of records provided by the pump rental company indicated that Mountain Run had rented the pump during 8 separate time periods totaling 307 days from 2005 through 2008. The maximum withdrawal rate was approximately 1,250 gallons per minute (1.8 mgd). A review of DEQ files indicated that in 2005, Mountain Run Golf, Inc. applied for a VWP permit for a water withdrawal from the South Anna River; however, Mountain Run Golf, Inc. did not complete the application by paying the \$20,000 permit fee. A VWP permit was never issued for the withdrawal. DEQ staff also inspected the forested wetland creation area required as mitigation.

Construction of the area was completed in 2006, but no monitoring reports have been submitted as required by the Permit. The wetland creation area did not appear successful. On October 14, 2008, DEQ issued Notice of Violation No. 08-09-PRO-700 to Mountain Run for failing to submit monitoring reports for the wetland creation area and for the unauthorized water withdrawal. Mountain Run will be required by the Consent Order to submit a corrective action plan for the forested wetland creation area. Mountain Run has submitted a Joint Permit Application for continuation of the water withdrawal, which is currently under review. The Appendix of the Consent Order allowed an interim withdrawal of up to 5% of the instantaneous flow of the South Anna River up to 500,000 gallons per day for a period of 6 weeks during August and September, to allow Mountain Run to maintain its turf during the dry season. The Appendix set strict limits on intake screen size and intake velocity based on comments from the Department of Game and Inland Fisheries. The interim withdrawal period is now finished and the withdrawals were conducted in compliance with the Appendix requirements. The cost of injunctive relief is estimated at \$30,000. The order was signed on 8/4/09. Civil Charge: \$0.

**Centerville II, LLC (Chesapeake) - Consent Special Order with a civil charge**

Centerville II, LLC owns the approximately 17.4 acre undeveloped parcel located at the terminus of Kinderly Lane adjacent to the Charlestown Shores Subdivision in Chesapeake, Virginia. The parcel consists of uplands as well as forested nontidal wetlands. A man-made canal borders the parcel to the south which drains into Stumpy Lake. On May 24, 2007 DEQ received notice from the US Army Corps of Engineers (USACE) that approximately 8.3 acres of unauthorized forested wetland land clearing, including excavation, fill, removal of trees, and grubbing of stumps, had occurred on the property. Reportedly, the clearing, excavating, filling, and grubbing of stumps on the property began in March 2007 and continued for approximately 30 days until the USACE advised Centerville II that the area likely contained wetlands. According to Centerville II, the parcel was being cleared and grubbed to provide twenty-seven (27) building lots for a residential subdivision. On June 4, 2007, DEQ staff conducted an inspection of the property. DEQ staff observed that unauthorized excavation and filling activity had occurred, in the area that appeared consistent with the approximately 8.3 acre area depicted on aerial photography and GIS mapping provided by the USACE. The impacted area had contained palustrine, forested, nontidal wetlands based on a 1993 delineation confirmed by the USACE on January 28, 1993 and reconfirmed by the USACE on March 13, 2001. At the time of the June 4, 2007 inspection, palustrine forested nontidal wetlands were not evident. A pile of large woody debris, including stumps, was observed near the center of the property. A smaller pile of mulch was also observed within the

cleared area on the property. A partially graveled path extended from the southern terminus of adjacent subdivision street Kinderly Lane through the cleared area to the man-made canal on the south side of the parcel. The large woody debris pile, smaller pile of mulch, and graveled path constitute fill material. A review of DEQ files did not find a Joint Permit Application submitted for the apparent impacts to wetlands on the property. DEQ issued Notice of Violation No. W2007-06-TRO-101, dated June 27, 2007, to Centerville II, LLC, advising of the above listed facts and applicable regulatory citations. The order requires payment of a civil charge, submittal of a complete and approvable Joint Permit Application for any proposed permanent impacts and/or an approvable wetland preservation and restoration plan and implementation schedule, implementation of the plan upon approval by DEQ, and compliance with any permit issued. The order was signed on June 12, 2009. Civil Charge: \$43,875

**West Neck Properties, Inc. (Virginia Beach) - Consent Special Order with a civil charge**

West Neck Properties, Inc. owns the Eagles Nest Subdivision property. DEQ issued VWP General Permit Authorization No. WP4-03-2331 ("Permit") to West Neck Properties, Inc., on February 27, 2004. The permit authorized the construction of Eagles Nest, resulting in permanent impacts to 0.227 acres of palustrine forested wetlands, 0.245 acres of palustrine emergent wetlands, and 0.295 acres of open water in the West Neck watershed. In addition, the Permit stated that 0.024 acres of forested wetlands would be converted to emergent wetlands, and two areas totaling 0.07 acres of forested wetlands temporarily impacted during construction would be restored to their pre-construction condition. Mitigation for the associated impacts was to come through the purchase of 0.723 credits from Davis Wetland Bank prior to any construction activity in the permitted impact areas. On September 14, 2007 DEQ staff conducted a file review and compliance site inspection of Eagles Nest Subdivision ("Property"). Upon completion of the file review, DEQ staff found no record of confirmation of the purchase of the required 0.723 credits from the Davis Wetland bank. In addition, DEQ staff found no record of a notification of construction submitted prior to commencement of activities in permitted impact areas, no record of construction monitoring reports, no photo documentation of construction within permitted impact areas, and no record of a notice of termination. In addition, the site inspection revealed that the two temporary impact areas totaling 0.07 acres of forested wetlands had not been restored to pre-construction condition, as required by the Permit. On October 1, 2007 Warning Letter No. W2007-09-T-1017 was sent to West Neck Properties, Inc. for failure to submit required documentation to DEQ in regards to the Permit. Multiple reviews of DEQ records and conversations with Mr. Zirpoli and his consultant revealed that West Neck Properties, Inc. had not submitted proof of mitigation banks credit purchase and construction monitoring reports. On January 23, 2008 DEQ issued Notice of Violation No. WP4-03-2331 ("NOV") to West Neck Properties, Inc. for the same issues left unaddressed by the previous Warning Letter- no proof of credit purchase, pre-construction notice, construction monitoring, or notice of project termination. On March 9, 2008 DEQ received a faxed copy of a letter from The Great Dismal Swamp Restoration Bank, LLC confirming the purchase on March 3, 2008 of 0.723 credits from the Edge Farm mitigation bank by West Neck Properties, Inc. On June 13, 2008 DEQ staff visited the Property. It was observed that the two temporary impact areas had still not been restored to pre-construction condition. Also, staff observed that a large forested wetland "finger" between Lots 37 and 38 appeared to have been cleared, grubbed, and graded, but was not authorized under the Permit. On October 21, 2008 DEQ staff inspected the Property and confirmed that approximately 0.115 acres of unauthorized impacts had been taken to a forested wetland area between Lots 37 and 38 on the Property. The forested wetland area had been cleared, the stumps grubbed, and the area graded to the level of the adjacent Lots. The unauthorized impacts to the 0.115 acres of forested wetland included the placement of fill material and discharge of a pollutant. In addition, one of the two temporary impact areas had not been restored, and the second had been replanted with loblolly pine, a non-wetland species. On November 21, 2008 DEQ issued NOV No. W2008-11T-0001 to West Neck Properties, Inc. and Mr. Zirpoli for the unauthorized impacts to approximately 0.115 acres of wetlands on the Eagles Nest Subdivision, and for not restoring the two temporary wetland impact areas on the Property to pre-construction conditions. The Order requires payment of a civil charge, submittal of a complete and approvable Corrective Action Plan (CAP) and implementation schedule for the restoration of the temporary wetland impact areas and mitigation for and preservation of the

unauthorized wetland impact area, and implementation of the CAP. The Order was signed on August 25, 2009. Civil Charge: \$32,291.

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*Consent Special Orders (Others)*

**Isle of Wight County - Consent Special Order with a civil charge**

Isle of Wight County is located in southeast Virginia, bordered by Suffolk City, Southampton County, Surry County, and the James River. County wastewater facilities began to develop in the 1980's and to date there are approximately 2,000 wastewater customers. The County has no wastewater treatment facilities, and all wastewater is transported to the Hampton Roads Sanitation District ("HRSD") wastewater treatment collection system, except that portion of wastewater flows that is transported to the City of Franklin for treatment. Isle of Wight County, HRSD, and twelve other localities entered into a Special Order by Consent ("Order") effective September 26, 2007 with the State Water Control Board. Violations noted in the Order resulted from Sanitary Sewer Overflow ("SSO") occurrences. Both the body of the Order, including Appendices A through N (Appendix K is specific to Isle of Wight County) and the Attachment 1 of the Order, "Regional Technical Standards", outline requirements and due dates for activity reporting and sanitary sewer flow monitoring, among other things. The Order at Appendix K, Item 8, requires that Isle of Wight County submit an annual report on the status of required work to DEQ on or before November 1 following the close of each fiscal year. The annual status report for 2008 from Isle of Wight was received by DEQ on December 31, 2008, 60 days (2 months) late. All twelve other localities submitted annual status reports on time. Attachment 1 to the Order, "Regional Technical Standards" Section 3.3.3, requires that flow monitoring for SSES ("Sewer System Evaluation Survey") basin identification shall be completed within 12 months of the effective date of the Order (i.e. effectively by September 26, 2008). The December 2008 Isle of Wight annual report states that sanitary sewer flow monitoring which meets the requirements of the Regional Technical Standards for SSES basin identification is scheduled to commence in January 2009 (subject to completion of equipment installation), with flow monitoring anticipated to be completed by July 2009 (weather dependant), approximately 10 months late. All twelve other localities completed flow monitoring on time. Note: the Order at Section D.4 states that Hampton Roads localities shall comply with the Regional Technical Standards that are attached to and incorporated into the Order as Attachment 1. The Order at Section B.7 identified Isle of Wight County as one of the Hampton Roads Localities. By letter dated February 9, 2009, Edwin P. Wrightson, Director of Isle of Wight General Services Department, had stated that the annual report was late due to the transition between General Services Directors and delays in flow monitoring were due to contractor issues. On March 9, 2009, DEQ issued Notice of Violation ("NOV") for non-compliance with the September 26, 2007 Order. The Order would require Isle of Wight County to pay a civil charge within 30 days of the effective date of the Order. The Order would also require Isle of Wight County to complete a Supplemental Environmental Project ("SEP") as partial settlement of the civil charge. The SEP proposed by Isle of Wight County is to provide the SEP amount of the civil charge funds to the Peanut Soil and Water Conservation District for a particular project to repair and control severe erosion and sediment issues at a 40-acre agricultural field. The Order was signed on August 20, 2009. Civil charge: \$3,900 (\$3,510 for SEP).

**Town of Front Royal - Consent Special Order with a civil charge**

Front Royal (the Town) owns and operates both the sewage treatment plant (STP) and the collection system serving the Town. Discharges of treated sewage from the STP are the subject of VPDES Permit No. VA0062812 (the "Permit"). The Permit authorizes the Town to discharge treated sewage from the STP to the South Fork of the Shenandoah River in strict conformance with the Permit's terms and conditions. On June 11, 2008 and July 3, 2008, DEQ issued Warning Letters to the Town for unpermitted discharges/bypasses of sewage to the South Fork of the Shenandoah River on April 20 and April 21, 2008 and May 12, 2008. The bypasses were attributed to rainfall events. The Warning Letters also cited the failure to submit an "Industrial Users" Survey due by May 30, 2008 and late submittal of the April 2008 DMR, due by May 10, 2008, but was received May 21, 2008. On September 22, 2008, DEQ staff discovered an overflowing manhole while conducting routine biological sampling on Happy Creek. The

sewage overflow initially entered a dry ditch and flowed about 60 meters through the ditch before entering Happy Creek. DEQ staff noted a distinct chlorine odor from the sewer overflow, but the discharge ceased before staff were able to take chlorine samples. The overflow occurred as a result of a sewer backup in the collection system during a surge release of backwash water from the Town's water treatment plant. The sewer backup apparently occurred due to root buildup in the line. DEQ received a "5-day letter" from the Town on October 6, 2008, regarding the unauthorized discharge from the manhole. On November 7, 2008, DEQ issued a NOV to the Town for the unpermitted discharge of sewage on September 22, 2008, which had potential adverse impacts to State waters in violation of Virginia Code § 62.1-44.5. and 9 VAC25-31-50.A. On December 8, 2008, DEQ issued a NOV to the Town for failure to submit an O&M Manual and failure to obtain a Certificate to Operate ("CTO") before beginning operations of the Rotary Fan Sludge Press as required by the Certificate to Construct ("CTC"), in violation of the Commonwealth of Virginia Sewage Collection and Treatment [SCAT] Regulations (9 VAC 25-790-50.A) and Permit Part I.3. Subsequently, the Town submitted the O&M Manual and obtained a CTO. On December 12, 2008, DEQ met with representatives of Front Royal to discuss the NOV and the circumstances that led up to the unpermitted discharge. During the December 12 meeting, DEQ discussed the status of I&I work in the Town's collection system and requested the Town submit a plan and schedule of corrective actions to address the I&I problems. By submittal dated January 29, 2009, the Town provided a written plan and schedule of corrective actions to address the Town's I&I problems. Sections of this plan and schedule have been incorporated into Appendix A of this Order. On February 17, 2009, DEQ issued a NOV to Front Royal for the unauthorized discharges of sewage on December 11 and December 12, 2008 to the South Fork of the Shenandoah River in violation of Virginia Code § 62.1-44.5. In addition, the NOV cited the Town with the failure to submit or re-evaluate local pretreatment limits by December 2, 2008, in violation of the Permit Part I.D.1.i. The Department has never issued a permit to the Town for the discharge of sewage at any locations other than its STP's permitted outfall. Front Royal has submitted all outstanding Permit required reports and submittals. The proposed Order, signed by the Town of Front Royal on May 28, 2009, requires the Town to conduct I&I corrective action work on its collection system to reduce/eliminate overflows from the system and to pay a civil charge to resolve the violations. Civil Charges: \$12,250.

**Donnie C. Campbell, Sr. (Nelson Co.) - Consent Special Order with a civil charge**

Donnie C. Campbell, Sr. operates in the Commonwealth of Virginia as a Poultry Waste Broker within the meaning of 9 VAC 25-630-10 et seq. (i.e., he possesses more than 10 tons of poultry waste in any 365-day period and transfers some or all of the waste to other persons). Mr. Campbell failed to submit annual poultry waste transfer records for the calendar year 2008 to DEQ by February 15, 2009 as is required by 9 VAC 25-630-60(D). DEQ issued a Notice of Violation (NOV) to Mr. Campbell on June 24, 2009. On July 7, 2009, DEQ staff met with Mr. Campbell to discuss possible remedies to the situation and to negotiate the conditions of a Consent Special Order. DEQ staff received copies of Mr. Campbell's poultry waste transfer records for the calendar year 2008 on July 13, 2009. Mr. Campbell signed a Consent Special Order to resolve the alleged violations on July 23, 2009. : Despite the previous letters sent by DEQ staff to Mr. Campbell, he appeared to respond more positively to the discussion and structure provided by the Consent Special Order negotiation process. The Order requires submittal of Mr. Campbell's poultry waste transfer records for calendar year 2009 by February 1, 2010. The costs incurred by Mr. Campbell to cure the alleged violations were negligible. Civil Charge: \$500.

**Kevin Lucas (Page Co.) - Consent Special Order with a civil charge**

Kevin Lucas operates in the Commonwealth of Virginia as a Poultry Waste Broker within the meaning of 9 VAC 25-630-10 et seq. (i.e., he possesses more than 10 tons of poultry waste in any 365-day period and transfers some or all of the waste to other persons). Mr. Lucas failed to submit annual poultry waste transfer records for the calendar years 2005, 2006, 2007 and 2008 to DEQ by February 15<sup>th</sup> of each subsequent year as is required by 9 VAC 25-630-60(D). DEQ issued a Notice of Violation (NOV) to Mr. Lucas on August 6, 2007, April 22, 2008 and April 30, 2009 for these recurring alleged violations. On July 15, 2009, DEQ staff met with Mr. Lucas to discuss possible remedies to the situation and to negotiate

the conditions of a Consent Special Order. DEQ staff received incomplete copies of the broker's poultry waste transfer records for the calendar year 2008 on June 1, 2009. Mr. Lucas signed a Consent Special Order to resolve the alleged violations on September 2, 2009. Despite the previous NOV's sent by DEQ staff to Mr. Lucas, he appeared to respond more positively to the discussion and structure provided by the Consent Special Order negotiation process. The Order requires submittal of his complete 2008 poultry waste transfer records by September 30, 2009 and of his 2009 records by February 1, 2010. The costs incurred by Mr. Lucas to cure the alleged violations were negligible. Civil Charge: \$1,250.

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*Consent Special Orders (Oil)*

**HMR, LLC (Chesterfield Co.) - Consent Special Order with a civil charge**

HRM, LLC owned a 10,000 gallon underground storage tank (UST) that was located at the property at 11901 Old Stage Road, Chester, Virginia. On May 30, 2008, DEQ staff conducted an UST inspection at the property. A Request for Corrective Action (RCA) was issued at that time, and then a Warning Letter (WL) was issued regarding noncompliance with UST regulations. Due to failure to respond to the RCA and WL, on November 24, 2008, a Notice of Violation (NOV) was issued to HMR, LLC. The NOV was issued for the following deficiencies that were unresolved since the formal inspection conducted on May 30, 2008: (1) failure to provide release detection records upon staff inspection; (2) failure to perform release detection testing for the UST and piping; (3) failure to provide documentation that the ten year tank lining inspection had been performed; and (4) failure to demonstrate and provide financial responsibility documentation upon staff request and inspection at the site. HMR, LLC addressed the violations by removing the 10,000 gallon tank from the ground on August 12, 2009, thus negating the need to perform testing or provide financial responsibility documentation regarding the UST. HMR, LLC agreed to the Consent Special Order with the Department to address the above described violations by removing the UST from the ground. The Order requires that HMR, LLC submit documentation verifying that the 10,000 gallon diesel UST has been properly closed or removed from the property and submit a tank closure report in accordance with regulations by no later than October 15, 2009. The Order also requires the payment of a civil charge. DEQ staff estimated the cost of injunctive relief to be approximately \$15,000. The order was signed 8/26/09. Civil Charge: \$3,720.

**Miller Oil, Inc. (Petersburg & Henrico and Chesterfield Counties)**

**Consent Special Order with a civil charge**

Miller Oil Co., Inc. ("Miller") owns and operates the subject gasoline dispensing facilities, which are subject to the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation ("UST Regulations"). The facilities are also subject to the State Air Pollution Control Law and related Emission Standards for Petroleum Liquid Storage and Transfer Operations, found at 9 VAC 5-40-5220 *et seq.* ("Emissions Standards"). From August 2007 through October 2008, DEQ Piedmont Regional Office staff inspected these four facilities to verify compliance with the Emissions Standards and the UST Regulations. DEQ staff found that at MM76, the 7530 form did not reflect a change in ownership, tank status, or release detection methods; at MM76 and MM71, Miller had not maintained records of release detection compliance; at MM76, Miller had failed to install appropriate corrosion protection; at MM71 and MM61, Miller had failed to maintain spill prevention equipment sufficient to provide protection from a release to the environment; and at MM61, Miller had not maintained its release detection equipment in working order. DEQ staff also observed violations of Emissions Standards at MM67, which are described in the Consent Order. Miller has corrected the violations found at each of the facilities, and is in compliance with the Consent Order. The cost of the corrections was approximately \$3,000. The order was signed on 6/29/09. Civil Charge: \$35,467.

**Highlands Petroleum Oil Corp. (Abingdon & Smyth Co.)**

**Consent Special Order with a civil charge**

Highlands Petroleum Oil Corp. operates an oil distribution business located at 603 Colonial Road in Abingdon, Virginia. Highlands supplies petroleum products to Hagy Oil, Inc., whose bulk plant is located at 1202 Upper Poor Valley Road, Saltville, Virginia. At 9:10 a.m. on December 15, 2008, DEQ

staff received a report of a petroleum discharge in the North Holston area, east of Saltville, from Mr. Charlie Harrington, Emergency Services Coordinator for Smyth County. Mr. Harrington had been contacted by a dispatcher with the Smyth County Sheriff's Department. The discharge was investigated by the DEQ as Incident Report ("IR") No. IR 2009-S-0201. A field investigation was conducted and staff determined that a discharge of red dyed kerosene occurred at approximately 3:30 a.m. that morning. The kerosene was apparently discharged from a Highlands Petroleum Oil Corp. tanker during offloading, under pumping pressure, to an aboveground storage tank ("AST") at Hagy Oil, Inc.'s bulk plant, located at 1202 Upper Poor Valley Road, Saltville, VA. The cause of the discharge was stated to be the failure of a delivery line coupling on the tanker. Red dyed kerosene was discharged onto the ground and flowed directly into the adjacent Watson Gap Branch. Product flowed down Watson Gap Branch for approximately 0.7 mile to its confluence with the North Fork Holston River. Product and sheen were noted for approximately five miles downstream on the North Fork Holston River. A total of four containment booms were placed across the river at different sites by Wingfield Environmental, Inc. (the consultant hired by the Company) and local fire department personnel. Absorbent booms and pads were also placed and maintained in Watson Gap Branch. More than 13 tons of red dyed kerosene impacted soils were removed from the location of the discharge by the consultant. Per letter dated December 17, 2008 and accompanying documentation, Highlands Petroleum representative Mr. Jimmy Silcox estimated that 1,506 gallons of red dyed kerosene were discharged at Hagy Oil, Inc.'s bulk plant on the morning of December 15, 2008. Calculations submitted later by Wingfield Environmental, Inc. estimated that approximately 858 gallons of kerosene were captured and removed in the grossly saturated soils, and approximately 210 gallons of kerosene were captured in booms and pads. The discharge of red dyed kerosene was reported after a time lapse of approximately six hours from the time the discharge occurred. According to DEQ files, Mr. Jimmy Silcox went to the location of the discharge at approximately 4:00 a.m. and assessed the nature and extent of impacts from the discharge with the delivery driver. DEQ was notified of the discharge at 9:10 a.m. by the Smyth County Emergency Services Coordinator. The NRC was notified of the discharge at 9:20 a.m., when Hagy Oil, Inc. personnel notified the NRC on behalf of Highlands Petroleum Oil Corp. Company officials were apparently aware of the discharge, but failed to report it "immediately upon learning of the discharge", as required. A Notice of Violation, citing the alleged violations, was issued to the Company by DEQ on January 29, 2009. A final report on the incident, prepared by the environmental consultant, and which included analytical data and disposal information, was received by DEQ on February 2, 2009. DEQ staff and Company officials then met on February 6, 2009. Civil Charge: \$20,264.52.

#### **Bay Bridge Enterprises, LLC (Chesapeake) - Consent Special Order with a civil charge**

Bay Bridge Enterprises, LLC ("Bay Bridge") operates a ship-dismantling facility. On September 1, 2008, Bay Bridge reported to the United States Coast Guard ("USCG") that a vessel (a former Navy oiler/refueler tanker, *U.S.S. Saugatuck*) being dismantled in Bay Bridge's "drag slip" had taken on water causing the discharge of an unknown quantity of fuel oil No. 6 into the water within the drag slip; that there was a two-foot gap in the temporary floating barrier ("boom") intended to keep any spilled petroleum products confined to the drag slip; and that consequently some of the fuel oil discharged to the Southern Branch of the Elizabeth River. The USCG estimated that 400-500 gallons of fuel oil had been discharged. Bay Bridge also reported that (1) it did not have a sufficient inventory of permanent booms available on site as its backorder had been only partially filled and (2) its cleanup efforts had been hampered by its alleged inability to contact an oil-spill-response vendor during the Labor Day holiday (holiday observed on September 1, 2008). DEQ staff ("staff") responded to the USCG spill report by site inspection on September 2, 2008, and observed that cleanup efforts were underway. Oil-absorbent booms and pads had been deployed and the temporary boom across the entrance to the drag slip had been repositioned to eliminate the two-foot gap. Staff also observed apparent oil deposits on bridge supports and on the shoreline and vegetation along the banks of a tributary to the Elizabeth River at several locations upstream of the facility (apparently carried there by tidal action). Staff reported that oil-spill-response vendors were available on the Labor Day holiday and that it took Bay Bridge over two weeks to complete the cleanup because the oil spill had become widely dispersed before it was discovered by Bay

Bridge personnel. Bay Bridge submitted an undated “five-day” letter, which summarized the information contained in the initial September 1, 2008, spill report notification. That letter added that, by the time the discharge of oil had been discovered by Bay Bridge personnel, oil had already accumulated on the opposite river bank and that part of the backorder of permanent booms had arrived on September 5, 2008. DEQ issued Bay Bridge a Notice of Violation on October 23, 2008, for the discharge of petroleum to State waters. On December 5, 2008, DEQ enforcement staff met with representatives of Bay Bridge and the United States Maritime Administration (“MARAD”). *Saugatuck* was being dismantled under a contract with MARAD. In addition to the information contained in the “five-day” letter, Bay Bridge stated that (1) as-built drawings for *Saugatuck* were unavailable when the ship was delivered to Bay Bridge for dismantling (confirmed by the MARAD representative) so the locations of any small tanks that might have contained fuel were unknown; and (2) the vessel had taken on water because the vessel had become stuck in the mud at the bottom of the drag slip and an unusually high tide had caused water to breach the temporary containment intended to keep water out of the hull and then enter the metal tube containing the vessel’s drive shaft (the “shaft alley,” which is normally watertight) and associated machinery spaces. The Order would require Bay Bridge to pay a civil charge within 30 days of the effective date of the Order and reimburse DEQ for the cost of investigating the oil spill (\$1,726.14). To minimize the risk of a recurrence, the Order also requires Bay Bridge to submit a corrective action plan and schedule to prevent future discharges of petroleum products from the drag slip into State waters and to properly contain and clean up a discharge should one occur. Bay Bridge signed the Order on June 26, 2009. Civil Charge: \$9,360.

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### *Other Business*

#### **Revolving Loan Fund - Proposed Funding List**

Title VI of the Clean Water Act requires the yearly submission of a Project Priority List and an Intended Use Plan in conjunction with Virginia's Clean Water Revolving Loan Fund (VCWRLF) Federal Capitalization Grant application. Section 62.1-229 of Chapter 22, Code of Virginia, authorizes the Board to establish to whom loans are made, loan amounts, and repayment terms. In order to begin the process, the Board needs to consider its FY 2010 loan requests, tentatively adopt a FY 2010 Project Priority List based on anticipated funding, and authorize the staff to receive public comments. On June 2, 2009 the staff solicited applications from the Commonwealth’s localities and wastewater authorities as well as potential land conservation applicants and Brownfield remediation clientele. July 17, 2009 was established as the deadline for receiving applications. Based on this solicitation, DEQ received eighteen (18) wastewater improvement applications requesting \$293,598,676 and two (2) land conservation applications for an additional \$1,520,000. A listing of the applications and a brief description of each proposal are included in Attachment A. The federal appropriation for the nation’s Clean Water State Revolving Funds for FY 2010 has not been approved yet but Virginia’s share is expected to be in the range of \$50 million. This represents a significant increase over prior year federal appropriations. State matching funds, along with the accumulation of monies through loan repayments, interest earnings, and de-allocation from leverage accounts should make an additional \$60+ million available for funding new projects. These funds will result in over \$110 million becoming available during the 2010 funding cycle. Based on the large amount of applications received relative to available resources, it will be necessary to leverage the Fund again this year. Through leveraging, available cash is placed in a debt service reserve account, and is leveraged on the bond market to create additional funds for projects. In anticipation of the continued high demand for VCWRLF funding principally due to the nutrient removal upgrades required for restoration of the Chesapeake Bay, we have met many times with the Virginia Resources Authority and their financial advisors regarding the funding capacity of the program and the ability of the Fund to meet this anticipated demand. From these detailed discussions, a capacity model of the Fund was developed and has been updated and evaluated each year based on market conditions. Recent results of this analysis indicate that, through the continued use of leveraging, the VCWRLF could provide funding in the range of \$200 million this year and still be sustainable to meet anticipated demand into the future. The staff believes it is prudent to move forward with the initial targeting of Virginia’s proposed FY 2010 clean water revolving loan funding list for public review based on the anticipated federal appropriation,



results of this capacity evaluation, and the maximum utilization of the Fund. Final Board approval of the list will not be requested until the December meeting. All 18 wastewater applications were evaluated in accordance with the program's "Funding Distribution Criteria" and the Board's "Bypass Procedures". In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type and impact on state waters, the locality's compliance history and fiscal stress, and the project's readiness-to-proceed. The list of wastewater applications in Attachment A is shown in priority funding order based on the Board's prioritization criteria. The two land conservation applications are still under review and awaiting input from the Department of Conservation and Recreation at this time. The results of this evaluation will be provided at the Board meeting. In the interest of assisting the maximum number of applicants with Fund resources, we looked closely at the larger projects with multi-year construction schedules that could be successfully funded in phases. Staff determined that three of the applicants (HRSD/Army Base, City of Richmond, and Arlington County) could be partially funded to meet cash flow needs without disrupting construction schedules, allowing more applicants to be addressed this year. Two of these applicants have already received partial phased funding in previous funding cycles. Two applicants (Town of New Market and Town of Richlands) have received partial funding through the American Recovery and Reinvestment Act (ARRA) such that their loan need has decreased and been adjusted downward since the time they applied. Two other projects (Stafford County and Tazewell County PSA) are not expected to get underway until 2011 and are being deferred to resubmit their applications during next year's funding solicitation. And one of the multiple contracts that the City of Lynchburg included in their request is not projected to start until 2011, so their loan amount has been reduced accordingly. The recommended funding list shown below provides funding for all the applications that are eligible and ready to proceed at amounts that will allow all of them to move forward. It is based on the best information and assumptions currently available to staff from the applications received, federal budget negotiations, and discussions between DEQ and the Virginia Resources Authority. A number of activities will be occurring over the next couple of months to help clarify these factors including the following: (1) DEQ will hold individual meetings with targeted recipients to verify the information in the applications, especially schedules; (2) negotiations between loan recipients and DEQ's Chesapeake Bay Program staff regarding Water Quality Improvement Fund grants to associated loan recipients will better determine the local share loan needs of some of the 2010 applicants; (3) determinations of the final local share loan need for several partially funded ARRA projects will occur and (4) finalization of the federal budget for 2010 will determine the federal appropriation for the Clean Water SRF. The staff is recommending that the list be tentatively adopted, subject to the verification of information in the loan applications (especially schedules) and the availability of funds from the federal appropriations and the 2010 leverage. The final list will be brought back to the Board in December. The VCWRLF program solicited applications for FY 2010 funding assistance and evaluated 18 requests totaling \$293,598,676. After a preliminary evaluation of funding availability, priority consideration, review of anticipated construction schedules, and projected cash flow needs, Virginia's FY 2010 Project Priority List includes 16 projects totaling \$201,788,650. Based on current and projected cash resources, and considering the additional funds that can be made available through leveraging, the Board should have sufficient funds available to honor these requests at the amounts shown through a leveraged loan program.

The staff recommends that the Board target the following localities for loan assistance, subject to the verification of the information in the loan applications (especially schedules) and the availability of funds, and authorize the staff to present the Board's proposed FY 2010 loan funding list for public comment.

1	HRSD/Army Base	\$50,000,000
2	Town of New Market	\$2,980,000
3	City of Richmond	\$20,000,000
4	City of Lynchburg	\$13,100,000
5	Town of Cape Charles	\$6,316,037
6	City of Norfolk	\$8,000,000
7	Arlington County	\$35,000,000

8	Wise County PSA	\$1,748,000
9	Town of Richlands	\$2,351,293
10	City of Covington	\$4,033,320
11	HRSD/Williamsburg	\$9,400,000
12	HRSD/Boat Harbor	\$8,400,000
13	City of Newport News	\$3,200,000
14	City of Charlottesville	\$7,000,000
15	Rivanna Water & Sewer Authority	\$30,200,000
16	Town of Mineral	\$60,000
Total Proposed FY 2010 Funding		\$201,788,650

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**General VPA Permit for Poultry Litter Management – Amendment (from page 22)**

*Request to Adopt Final Amendments to the Virginia Pollution Abatement (VPA) Permit General Permit Regulation for Poultry Waste Management (9VAC25-630-10 et seq.)*

At the October 26, 2009 meeting, staff intends to bring to the Board a request to adopt final amendments to the Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management (9VAC25-630-10 et seq.). These final amendments will ensure that poultry waste is being used in a manner in which state waters are being protected from improper use or storage of poultry waste, not only on permitted farms, but on farms that receive transferred material. The final amendments require that persons receiving transferred poultry waste abide by certain minimum requirements regarding application rates, timing, storage and recordkeeping. The end-user will not be required to obtain a permit unless they are found to be non-compliant with the requirements of the technical regulation. § 62.1-44.17:1.1 of the Code of Virginia authorizes the State Water Control Board to establish and implement the Poultry Waste Management Program. This Code section provides provisions that the Board must, at a minimum, include in its regulations developed pursuant to this authority. In addition to these mandatory provisions, subsection D provides the Board broad discretion to include in its regulations any provisions necessary to protect state waters. It provides: D. The [Poultry Waste Management regulatory] program shall reflect Board consideration of existing state-approved nutrient management plans and existing general permit programs for other confined animal feeding operations, and may include such other provisions as the Board determines appropriate for the protection of state waters. (emphasis added). This subsection provides to the Board the requisite authority to regulate end users of poultry waste, as well as any other entity or activity related to poultry waste generation, storage or use in order to protect state waters. Concerns have been expressed by the public, legislature and executive branch that additional safeguards are necessary to ensure that poultry waste that leaves the site and control of the permitted confined poultry feeding operations for land application are managed, applied and stored in a manner that is protective of water quality. In response to a letter dated January 10, 2007 from L. Preston Bryant, Jr., Virginia Secretary of Natural Resources, a stakeholder group comprised of key representatives from the agricultural and conservation sectors met three times (March 13, 2007, May 18, 2007 and June 22, 2007) to discuss issues related to the management of off-site poultry waste. Currently, the VPA General Permit Regulations for Poultry Waste Management (9VAC25-630-10 et seq.) require that poultry waste applied on lands owned by the permitted owner/operator of a confined poultry feeding operation be done so in accordance with a nutrient management plan written by a planner certified by the Virginia Department of Conservation and Recreation (DCR). Permitted operations are inspected annually to ensure that poultry waste is stored, applied, and otherwise managed according to the regulations. However, under the current regulations, poultry waste that is transferred off-site is only required to be accompanied by waste analysis information and a fact sheet (developed by DEQ and DCR) that provides the recipient with general provisions regarding the storage, management and application of the poultry waste. The end-user must acknowledge receipt of the fact sheet by signing a separate “Poultry Waste Transfer Records” sheet. Maintenance of records, including the date and amount of the transfer, zip code of the location receiving

the off-site poultry waste and nearest stream or waterbody, is the requirement of the owner/operator of the confined poultry feeding operation (or third-party broker if one was involved in the transaction). Records must be made available to DEQ personnel upon inspection of the confined poultry feeding operation. For off-site application of poultry waste, the present regulation does not require records of 1) the amount of waste received by a single farm, 2) whether or not the poultry waste will be applied in accordance with a nutrient management plan, 3) soil test levels on receiving fields, 4) timing of applications, or 5) a description of receiving crops. Based on estimates from DEQ tracking as well as DCR nutrient management plan data, upwards of 80% of all poultry waste generated by Virginia's 894 permitted confined poultry feeding operations is transported off-site for land application. In addition, upwards of 70% of the poultry waste transferred within the Shenandoah Valley remains within the concentrated poultry production region of the Valley (Rockingham, Page, Augusta, Shenandoah, Rockbridge, and Highland counties) and over 60% of all the poultry waste transfers in Virginia remain within the same county where the poultry waste originated. Thus by far the majority of poultry waste in Virginia can be applied without adhering to the majority of the requirements in the VPA regulation designed to protect water quality. While the stakeholder group made significant progress toward identifying numerous critical components of an off-site waste management program, there remained additional unresolved issues, including: application rates, application timing, reporting/recordkeeping, storage, soil tests, and waste broker requirements. In order to address these issues, a Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register of Regulations on November 26, 2007 with the comment period ending January 11, 2008. The Department utilized the participatory approach by forming an ad hoc technical advisory committee (TAC) that held four (4) public noticed meetings (April 25, 2008; June 5, 2008; August 13, 2008 and October 8, 2008) in Charlottesville. A list of the members of the Technical Advisory Committee is attached to this memo. The TAC reached general consensus that proper use of poultry waste should be encouraged, as mismanagement could not only cause water quality problems, but also cause a loss in value to the farmer. The TAC also felt that any regulatory mechanism used should include consideration of the marketing of poultry waste as a valuable resource, not to result in the "stranding" of poultry waste on producers' farms. Staff has proposed a mechanism in that the end-user will be required to follow the requirements included in the technical regulation which are equally as enforceable as those required by permit coverage. The end-user or broker would not be required to obtain a permit unless non-compliance with the technical regulations is identified. Staff drafted technical requirements regarding proper land application and storage of poultry waste. Amendments include four options by which an agronomic application rate can be determined depending on certain site and management conditions; storage requirements; land application timing and buffers. The proposed amendments included language regarding additional reporting and recordkeeping for the permitted grower as well as the poultry waste broker and end-user. The proposed regulatory language was noticed for public comment on June 22, 2009. Three public hearings were held around the state (July 29, 2009, August 4, 2009, and August 6, 2009). Upon the closing of the comment period on August 21, 2009, staff received comments from over 600 individuals and organizations regarding the proposed amendments. Significant comments were received regarding the following requirements: the transfer tonnage threshold which triggers recordkeeping, the grower annual reporting, the added grower training frequency, the "standard rate" for land application, and the recordkeeping item regarding how the end-user will obtain the land application rate. Based on public comments, the following substantive changes were made to the proposed regulation:

1. The change in the tonnage threshold which triggers recordkeeping was removed. This threshold will remain at 10 tons. Numerous comments were received indicating that this requirement would be overly burdensome. Staff determined that lowering the recordkeeping threshold to five (5) tons will not provide significant additional water quality protection than the original threshold of 10 tons. Most poultry litter applied commercially is delivered in multiple spreader truck loads, each holding eight (8)-10 tons. In addition, the regulation requires that the technical requirements for poultry waste storage and use be followed for any amount of litter applied. The 10 ton threshold will focus the enforcement of the requirements on the majority of transferred waste.

2. The annual reporting requirement for the poultry grower was removed. Numerous comments were received indicating that this information is more easily transmitted to DEQ during the annual inspection. Staff determined that effective data retrieval and analysis can be achieved without adding an annual reporting requirement since the data will continue to be collected during the annual inspection and can be requested by staff at anytime.

3. The recordkeeping question regarding how the end-user will obtain an appropriate land application rate was removed. Numerous comments were received indicating that the grower will not be certain of the actions taken by the end user, thus this information will often be inaccurate.

The final language was not changed regarding the "standard rate" of 1.5 tons every three years.

Numerous comments were received, some indicating the option was not restrictive enough and others requesting it be increased. No changes were made to this option, as it is only one of the four options by which an end-user may obtain an appropriate land application rate and it is intended to encourage transport and utilization of poultry waste to areas where manure is not commonly used. The final language was not changed regarding the added grower training frequency to once every five years. Numerous comments were received that this requirement was burdensome and training could be delivered during annual inspections. DEQ staff will work closely with the poultry industry associations and commercial processors to facilitate the grower opportunities to receive the required training i.e.; during scheduled industry events, meetings, etc. The requirement to attend more than one training session is consistent with the Virginia Pollution Abatement General Permit for Animal Feeding Operations in that the livestock operators must attend training once every three years. The final language was not changed regarding DEQ's right of entry. This provision was added to the new technical regulation sections to be consistent with existing requirements for permitted poultry growers. This standard language reads: Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation. Comments were received that this language should include "with prior notice". No change was made to the proposed amendment language, as it simply clarifies the authority granted to DEQ in State Water Control Law. Please see the attached Summary of Final Changes to the VPA General Permit Regulation for Poultry Waste Management (9VAC25-630) and Regulation Section Changes Document for more detailed information regarding the final changes to the VPA General Permit Regulation for Poultry Waste Management.

#### SUMMARY OF COMMENTS RECEIVED & RESPONSES TO COMMENTS SEPTEMBER 2009

##### GC-1 SUBJECT: SUPPORT FOR AMENDMENTS ADDRESSING LAND APPLICATION AND STORAGE REQUIREMENTS

COMMENT: The proposed regulations place important storage, setback, and land application requirements on the "end-users" of poultry litter as fertilizer. We urge you to approve these regulations as a reasonable and appropriate approach for ensuring that poultry litter continues to be used as an effective fertilizer in a manner that safeguards our local waterways.

COMMENTERS: See table 1 in Appendix I

RESPONSE: DEQ acknowledges the support. *No changes are being proposed to address this comment.*

##### GC-2 SUBJECT: WATER QUALITY PROTECTION

COMMENT: Comments were received in support of the proposed amendments because they provide a mechanism for additional water quality protection.

COMMENTERS: See table 2 in Appendix I

COMMENT: This would include measures to keep wastes from 1) leaching into waterway run-off (following unrestricted waste storage or distribution over agricultural/other land surfaces) or 2) being taken up by (edible aquatic/land animals or plants).

COMMENTER: Dr. Patricia M. Hilgard

COMMENT: Much of the agricultural nutrient pollution that has caused excessive algal growth and oxygen deprivation in Virginia's rivers and the Bay has occurred in our own lifetimes. We owe it to the present and future generations of user's of Virginia's waterways to take serious, practical steps to prevent additional damage, and to help restore the river and Bay waters to their former clarity, beauty, and

biological productivity. Poultry farmers must comply with the state's water quality protections when they use poultry litter on their farms. It only makes sense that poultry waste brokers and end-users should also abide by the water quality protections when the litter is transferred off-site. This regulation takes appropriate and commonsense steps that will help protect our state's rivers and the Chesapeake Bay. I strongly support the proposed changes to Virginia's poultry waste regulations, and urge you to approve them.

COMMENTER: Charles Rories

COMMENT: On behalf of the Chesapeake Bay Foundation, I am writing to urge the State Water Control Board to approve the proposed changes to the Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management that include land application and storage requirements for end-users of poultry litter. These regulations are critical to ensuring that the poultry litter transported off permitted poultry growing operations to end-users is stored and land applied in a manner that is protective of water quality. The proposed changes are also critical to achieving Virginia's Chesapeake Bay restoration goals and are considered critical component for achieving Virginia's 2011 milestone commitment to reduce nitrogen and phosphorus loadings to the Bay by 2.4 million pounds of nitrogen and 435,000 pounds of phosphorus.

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

COMMENT: I am writing in support of the proposed changes to the VPA General Permit Regulations for Poultry Waste Management. I believe these changes will result in an increase in appropriate land application practices on the part of end-users.

COMMENTER: Becky Barlow, Poultry Litter Market Marker

RESPONSE: DEQ acknowledges the support. *No changes are being proposed to address this comment.*

COMMENT: The land-application of poultry litter should be banned in the watersheds of bodies of water that violate the Clean Water Act and are formally impaired because of high fecal coliform bacterial levels, especially where harvesting of shellfish is prohibited for that reason.

COMMENTER: Lynton Land

RESPONSE: Multiple restrictions included in the proposed regulation serve to protect state waters from additional pathogen impairments. These restrictions include application rates, application timing, land application buffers, storage location, storage surface and storage covers. *No changes are being proposed to address this comment.*

COMMENT: We believe the proposed buffer between waste sites and water supplies should be extended from 100 feet to 200 feet.

COMMENTER(S): Don Sims, Float Fisherman of Virginia; Bill Tanger, Friends of the Rivers of Virginia

RESPONSE: A 100 foot buffer between poultry waste storage locations and water bodies is consistent with the requirements for the permitted poultry grower. This buffer requirement has been in place since the inception of the poultry waste management regulatory program in 2000. Implementation of the 100 foot buffer, combined with the ground conditions and cover requirements have proven to be effective measures to protect surface and ground water, as supported by annual inspections of sites maintained by permitted poultry growers. *No changes are being proposed to address this comment.*

COMMENT: Comments were received regarding improving the condition of polluted rivers and ensuring the healthy streams remain pristine by requiring litter application setbacks from sensitive environmental features and streams, soil testing to guide application rates, application close to crop growing season, and better litter covering practices.

COMMENTER: See table 6 in Appendix I

RESPONSE: The agency believes that the technical requirements contained in section 9VAC25-630-80 will adequately address concerns regarding appropriate storage and agronomic land application of poultry waste. *No changes are being proposed to address this comment.*

COMMENT: Our concerns must not only be with the nutrients but with the bacterial impact, which I think supports DEQ's plan in these proposed regs to reduce the threshold from 10 tons to 5 tons. I acknowledge the State is short of money but I don't think that should stop trying to do good things. I support the proposed regulations.

COMMENTER: Robert Spiller

RESPONSE: Multiple restrictions included in the proposed regulation serve to protect state waters from additional pathogen impairments. These restrictions include application rates, application timing, land application buffers, storage location, storage surface and storage covers. DEQ acknowledges the support. *No changes are being proposed to address this comment.*

COMMENT: We are concerned that the State Water Control Board will approve a regulation for the purpose of improving water quality for which agriculture will not receive any quantifiable credit for either reducing potential or actual non-point pollution let alone improving water quality as a result of regulatory implementation. How much reduction in nitrogen and phosphorus runoff does DEQ estimate will occur? If a pollution reduction occurs how will it be quantified in the Chesapeake Bay and other watershed modeling? All end-users will be required to adhere to the same proposed storage, buffer and application timing requirements. End-users that implement a nutrient management plan for poultry waste utilization should obviously receive credit. End-users that implement one of the other proposed options in many cases will actually apply fewer crop nutrients and should receive credit for the nutrient reduction as well. If pollution reduction can not be estimated or does not occur, then why is DEQ recommending the proposed?

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

RESPONSE: This regulatory action is a compromise between requiring all users to implement a nutrient management plan (nmp) and allowing the utilization of more flexible options for land application. When an end-user utilizes an nmp written by a certified nutrient management plan writer, the nutrient reduction will be credited in the watershed models and ultimately towards non-point source reduction goals. The reduction credit will depend on how many end-users will utilize the nmp option in the technical requirements. *No changes are being proposed to address this comment.*

COMMENT: We urge the State to adopt proposed amendments that will improve the quality of our waters in Virginia.

1. approval of the contents of the NMP is a critical aspect of the proper management of the waste. Therefore, the state should adopt detailed criteria for approval of the NMP, and the proposed criteria should be subject to public comment.

2. the monitoring frequency can be increased - frequent monitoring should be spelled out

COMMENTER: Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River  
Margaret Lorenz, Friends of the North Fork of the Shenandoah River

RESPONSE: DEQ acknowledges the suggestions and adds clarification that a nutrient management plan approved by VA DCR is only required of the permitted entity, and a nutrient management plan is one option for an end-user to determine the application rate. The proposed amendments intend to support water quality which supports beneficial uses of the river. *No changes are being proposed to address this comment.*

COMMENT:

1. Amendments to the regulation will close a large environmental loophole
2. Will address problems associated with concentrated animal agriculture
3. Pollution problems associated with improper application of poultry waste are well-documented
4. Current regulations are not adequately protective of land and water.
5. Improper land application of poultry waste can contribute to water quality problems.
6. Annual manure phosphorus production in the Shenandoah Valley exceeded annual crop phosphorus uptake.
7. Poultry litter is an imbalanced fertilizer, in that when it is applied to meet crop nitrogen needs it provides more phosphorus than the crop needs. If litter is continually applied to meet N needs, phosphorus will build up and science shows that high soil phosphorus levels and poultry litter application result in increased phosphorus concentrations in runoff.
8. Litter is more economical to use than commercial fertilizer because of the abundance and low cost.
9. Phosphorus levels are very high in many soils that receive poultry litter applications in the Shenandoah Valley. Crops could be grown in these soils without any supplemental phosphorus.

COMMENTER: Jeff Kelble - Shenandoah Riverkeeper

RESPONSE: DEQ acknowledges the suggestions. The proposed amendments intend to support water quality which supports beneficial uses of the river. *No changes are being proposed to address this comment.*

**GC-3 SUBJECT: WATER QUALITY AND RECREATIONAL USES**

COMMENT: Comments were received regarding support of the proposed amendments for reasons of water quality and/ or recreational uses.

COMMENTERS: See table 3 in Appendix I

RESPONSE: DEQ acknowledges the support. The proposed amendments intend to support water quality which supports beneficial uses of the river. *No changes are being proposed to address this comment.*

**GC-4 SUBJECT: GENERAL SUPPORT**

COMMENT: Comments were received regarding support of the proposed amendments.

COMMENTER(S): See table 4 in Appendix I

COMMENT: I support stringent regulations of Poultry Litter used as a fertilizer.

COMMENTER: John C. Barber, Sr.

COMMENT: DEQ staff's efforts to create a workable regulatory proposal are commendable.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

COMMENT: We applaud the Honorable L. Preston Bryant, Secretary of Natural Resources, and the Virginia Department of Environmental Quality for establishing an inclusive process to develop these proposed changes.

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

COMMENT: VPF commends DEQ for its participatory approach to develop the proposed regulation.

VPF appreciated the opportunity to serve on the agency's Technical Advisory Committee. Furthermore, VPF acknowledges that the proposed regulation reflects input offered by VPF and other agricultural representatives on the TAC.

COMMENTER(S): Hobe Baughan, President - Virginia Poultry Federation

COMMENT: The DEQ staff are to be commended and supported for an excellent and comprehensive set of proposed regulations.

COMMENTER(S): Don Sims, Float Fisherman of Virginia

Bill Tanger, Friends of the Rivers of Virginia

COMMENT: We do commend DEQ for working diligently to find consensus between all interested parties on a number of issues.

COMMENTER: Katie K. Frazier, Vice President - Public Affairs

COMMENT: We want to thank the staff of the Department of Environmental Quality (DEQ) for their work on this proposed regulation. JRA has been involved in the Technical Advisory Committee (TAC) process through which these regulations have been developed. We believe that process was constructive and important for allowing the various parties to represent their interests. Because we believe that these proposed regulations reflect a balancing of interests between the concerns of chicken waste producers, brokers, and end-users and the paramount need to significantly enhance protections for water quality and human health, we support them in their present form and ask the State Water Control Board to adopt them. However, should the DEQ staff recommend changes to the draft regulatory proposal that would weaken these protections, that balance would need to be re-drawn.

COMMENTER: David Sligh, Upper James Riverkeeper - James River Association

COMMENT: I want to commend the DEQ for these well vetted, thoughtful, and balanced proposals for regulating the VA chicken litter market. We can no longer afford to leave the water quality of our state entirely up to market forces and conventional practices, as well-intentioned as the large majority of VA farms are. The natural tendency to over-use fertilizer is well attested by decades of examples. Thank you for your careful and conscientious efforts to be wise stewards of our precious and shared state resources.

COMMENTER: Kent Sensenig

COMMENT: I do appreciate DEQ efforts and I am a 100% for water quality. As a farmer I feel it is our job to be good stewards of the land that the good Lord has blessed us with.

COMMENTER: Will Sanderson, Cumberland County Poultry Grower

RESPONSE: DEQ acknowledges the support. *No changes are being proposed to address this comment.*  
**GC-5 SUBJECT: NOT SUPPORTIVE**

COMMENT: These proposals appear to be a case of trying to fix something that isn't broken. Current regulatory requirements appear to be doing a more than adequate job of protecting the environment while still maintaining poultry litter as a safe and affordable form of fertilizer. Please make no change to these regulations.

COMMENTER: William Cole, Amelia County Poultry Grower

COMMENT: As a poultry grower and a small family-farm owner, I would strongly urge both SWCB and DEQ to NOT impose additional amendments to the Virginia Pollution Abatement Regulation for Poultry Waste Management on poultry litter end users. Thank you for your consideration in helping the small American farm to live on.

COMMENTER: Charles Wenger

COMMENT: I feel it's a shame that a few irresponsible growers can cause regulations to increase that ultimately affect every person involved in poultry production. I feel like the main is being pointed to poultry producers and should be looked more to homeowners that are over applying fertilizers on there yards; which I feel is doing more damage to Chesapeake Bay than the poultry producers.

COMMENTER: Will Sanderson, Cumberland County Poultry Grower

COMMENT: The biggest concerns I have as a broker is, DEQ applying this law statewide, when I do not think poultry litter, the application of poultry litter is a problem statewide. I don't think the State as a whole needs to have a nutrient management plan or be regulated as stringently with the tonnage application.

COMMENTER: Matt Long

RESPONSE: The DEQ looked at other options, to address the issues and concerns regarding poultry waste that is transferred and managed off-site, such as:

1. developing a new Virginia Pollution Abatement (VPA) Permit to cover the end-user of the poultry waste;
2. using the Fact Sheet as a permit which would allow for a simpler approach to the regulatory process for the end-user as compared to the individual Virginia Pollution Abatement Permit approach; or
3. taking no action and continue to rely on the existing voluntary approaches such as the phytase feed initiative, the poultry litter transport incentive program and the "litter hotline"

All of the alternatives were considered by the technical advisory committee and DEQ staff. The most efficient and widely accepted option was to utilize the existing VPA general permit regulation for poultry waste management through technical requirements that do not require the end-user to obtain a permit. *No changes are being proposed to address this comment.*

**GC-6 SUBJECT: FISH KILLS - POULTRY WASTE STORAGE AND LAND APPLICATION**

COMMENT: Comments were received regarding the fish kills and their link to poultry waste utilization.

COMMENTER(S): See table 5 in Appendix I

COMMENT: Severe pollution problems have been caused by mishandling of these wastes and this must be stopped. We face very serious problems in areas where significant land application of poultry waste is occurring, including on-going findings of diseased, malformed, and dying fish. We acknowledge that no certain link between poultry waste and these problems has been shown but these land application activities continue to be one suspected contributor to the problem.

COMMENTER: David Sligh, Upper James Riverkeeper - James River Association

RESPONSE: The efforts of the Virginia fish kill task force focused specifically on arsenic as a possible cause of recent fish kills in the Shenandoah Valley, an area with a high frequency of poultry litter applications. No definitive evidence linking arsenic (or poultry litter) to the fish kills could be found. Research has shown that misapplied poultry litter can result in water quality problems, primarily related to nutrients and pathogens, thus those are the focus of the regulatory requirements. Further, many poultry companies have ceased using arsenical compounds in the feed. The storage requirements included in the proposed regulation will protect surface and ground water from leaching and runoff. *No changes are being proposed to address this comment.*



COMMENT: I have been alarmed over the fish kills and increasing algae blooms on the river, so I want to speak in favor of these regulations. I think it's very important that we do a better job of protecting our waterways and protecting our river. I wanted to say a thank you to the agricultural community up river from us, I know you guys have been working for a number of years putting in best management practices and doing the right thing, as far as water quality is concerned we appreciate that it is an economical challenge for you.

COMMENTER: John Gibson - Down River Canoe Company

RESPONSE: DEQ acknowledges the support. *No changes are being proposed to address this comment.*

**GC-7 SUBJECT: ARSENIC**

COMMENT: The regulations should specify an upper limit for arsenic concentration in the poultry waste, no higher than 75 ppm, and should explicitly state that leaching and runoff from stored piles of litter is absolutely prohibited.

COMMENTER: Lynton Land

COMMENT: We need to cease the use of Roxarsone in chicken feed that results in the presence of arsenic in chicken waste

COMMENTER: Brian Collins

COMMENT: Contaminants analyzed should also include commonly found endocrine disruptor chemicals such as arsenic.

COMMENTER: Bob Luce

COMMENT: I am an environmental toxicologist and risk assessor. I have been working on this and allied areas for some years. It is BEYOND IMPORTANT to enact rules to manage poultry wastes in and around VA. Did you know that, in addition to the obvious contaminants in chicken waste, there is also a load of arsenic (used in feed to keep the fly population at bay)?

COMMENTER: Dr. Patricia M. Hilgard

COMMENT: Add arsenic to the list of pollutants that are monitored in the wastes.

COMMENTER: Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River  
Margaret Lorenz, Friends of the North Fork of the Shenandoah River

RESPONSE: Arsenic is commonly found in soil and water environments due to natural geological processes as well as human activity. While research is ongoing, there is not an abundance of evidence to indicate that poultry litter applications made using appropriate BMPs (as included in the proposed regulation) will raise arsenic concentrations in soil sufficiently over background levels to pose water quality problems. Further, the efforts of the Virginia Fish Kill Task Force focused specifically on arsenic as a possible cause of recent fish kills in the Shenandoah Valley, an area with a high frequency of poultry litter applications. No definitive evidence linking arsenic (or poultry litter) to the fish kills could be found. Research has shown that misapplied poultry litter can result in water quality problems, primarily related to nutrients and pathogens, thus those are the focus of the regulatory requirements. Further, many poultry companies have ceased using arsenical compounds in the feed. The storage requirements included in the proposed regulation will protect surface and ground water from leaching and runoff. *No changes are being proposed to address this comment.*

**GC-8 SUBJECT: LITTER MARKET AND STRANDING**

COMMENT: My hope as both a farmer and a legislator is that we will not make these regulations so over burdensome that it will completely destroy the litter market that we have here in the area. For some folks that are smaller operations my fear is that if these regulations are over burdensome, they will just say it's a lot easier to go co-op and use commercial fertilizer and they will just completely abandon their plan of using poultry litter.

COMMENTER: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

COMMENT: One big concern is the 80% of manure that is moved offsite from the 894 permitted poultry farms, if the process the technical regulations or coverage under the permit for the end users and brokers is too cumbersome they may decide they are not going to fool with chicken manure that would strand it on the poultry farms and our growers will have more headaches and more difficulties in properly handling the manure and the state could end up finding itself with more water quality problems because this

manure on the permitted farms has no place to go and its not going to be finding a home on non-permitted farms or in the hand of brokers. Poultry manure, I am told by those who use it is more difficult to land apply than commercial fertilizer and if the end users have to go through the government regulations or comply with the technical regulations or if they don't do that comply with permit coverage they may decide I am going to use easier to apply, easier to handle, less cumbersome, less regulated commercial fertilizer and poultry manure that create problems for our growers.

COMMENTER: Bill Satterfield, Executive Director - Delmarva Poultry Industry, Inc.

COMMENT: We remain concerned that regulating end-users of poultry litter, when commercial fertilizer is not regulated, could harm the market for litter, possibly stranding litter on poultry farms, which will economically hurt poultry farmers. It is critical that DEQ and the SWCB understand the magnitude of the "stranding" problem and consider the ramifications of moving forward with this proposal without a plan to address this problem through some alternative use of poultry litter. DEQ records show that regulated poultry farmers transfer nearly 250,000 tons of litter to other farmers. On average, poultry farmers receive about \$10 per ton for their litter. The proposed regulation will restrict the acreage available for poultry litter application in the Commonwealth. Without some alternative use to maintain demand for litter, the value of litter will quickly diminish and litter could become a liability for farmers. The average poultry farmer could lose thousands of dollars in income and potentially incur thousands of dollars in additional costs.

COMMENTER(S): Hobey Baughan, President - Virginia Poultry Federation

Roger Hatcher, President - Cumberland County Farm Bureau

COMMENT: While we strongly urge DEQ to maintain these previously outlined provisions in the regulation, there continue to be concerns within our membership on a few key issues including; the potential "stranding" of poultry litter on farms and a lack of "safety valve" when and if such a situation should develop, and the overall economic impact on poultry farmers, should stranding occur. These end-user regulations could potentially lead to "stranding" of poultry litter on poultry farms due to a decreased market demand. Litter that is stranded on poultry farms with no options for application or removal may lead to other water quality and environmental impacts, in addition to the negative economic impacts for poultry producers.

COMMENTER: Katie K. Frazier, Vice President - Public Affairs

COMMENT: Given increasing fertilizer prices (for nitrogen, phosphorus, and potash), poultry litter is a highly sought after commodity, and many Virginia farmers who could use poultry litter are unable to find available sources. While many farmers around the Commonwealth are seeking poultry litter, farmers in high-density production areas continue to dominate the end-user market.

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

COMMENT: Just don't overburden the farmer and strand litter to where we can't do our jobs and grow food for this country.

COMMENTER: Will Sanderson, Cumberland County Poultry Grower

COMMENT: Concerned that regulation will cause people to use commercial fertilizer, market is good now.

COMMENTER: Mark Deavers - Poultry Broker, Winston Turner

COMMENT: Concerned that regulation will cause stranding of litter on growers farms.

COMMENTER: Jeff Good

COMMENT: I would like to have a say in where I can sell my litter, this is going to affect the people buying chicken litter as fertilizer; this will help my [anaerobic digester] project, but I don't think I want to stress it that way.

COMMENTER: Donald Bishop, Cumberland County Poultry Grower and Cumberland County Anaerobic Digester Project

COMMENT: This proposal will cause stranding of poultry litter on the farms where it may not be able to be used on the farm due to the limitations of the nutrient management plans.

COMMENTER: Bruce Holland - Poultry Grower

COMMENT: This proposal will cause stranding of poultry litter on the farms and loss of income.

COMMENTER: Freddy Holland - Poultry Grower

COMMENT: The technical requirements proposed for end users will represent a change. Many of our elderly members resist any change. Our concern is that people will stop using litter which is regulated to un-regulated sources of fertilizer.

COMMENTER: Rick Shiflet, Land Use Committee - Augusta County Farm Bureau Federation

COMMENT: Farm Bureau is concerned that this proposed regulation will make end-users reluctant to continue to use poultry litter because of the added bureaucracy and fear of the unknown of being targeted by this proposal. This proposal will disrupt current poultry waste markets and will result in some poultry litter being stranded on poultry farms that need to transfer the waste. Many end-users were reluctant [to] use poultry litter when 9VAC25-630 was originally promulgated out of concern the new regulation would impact their operations even though litter was considerably cheaper than it is now and they only needed to follow DEQ's fact sheet guidelines for using poultry litter.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

COMMENT: VDACS is concerned that the adoption of the proposed amendments could have serious, unintended economic consequences for Virginia's farming communities. The proposal will severely limit the movement of poultry waste off poultry farms and that these restrictions will have unintended environmental implications. The board needs to consider the full economic impact that the proposed changes will have on Virginia's agricultural communities.

COMMENTER: Todd Haymore, Commissioner - VDACS

COMMENT: Our government continues to impose regulations that have a financial burden on farmers with little or no assistance. At a time when our economy is weak and the government is buying out banks and auto companies there is little help for farmers! Fertilizer prices are high. The land application of poultry litter is a win for the poultry grower and the farmer as fertilizer. These regulations would devalue poultry litter and limit its use. Where would the supporters of these regulations like to see the litter go? To local landfills?

COMMENTER: Jackie and Howard Easter - Amelia County Poultry Grower

COMMENT: If end users were to feel that these requirements were burdensome, it could result in a backlog of litter left on farms. What affect on watersheds in TMDL areas would result? Will these changes cause a switch in the use of organic nutrients that are now regulated to the use of inorganic nutrients that are not regulated?

COMMENTER: Headwaters Soil and Water Conservation District - Land Use Committee

COMMENT: We feel that as good stewards of our land we are already doing an adequate job and that additional burdens imposed on the end user of litter will cause them to abandon chicken litter and opt for other forms of fertilizers. This then causes a "stock pile" effect on the family farm with no place to move the litter. This will drive litter profits down to where growers will be unable to offset their costs in dealing with the litter. Believe me, we have already experienced some of these hardships ourselves as poultry growers and feel that additional requirements will make it harder and harder for us to move poultry litter as well as there not being a cost-effective method to do so.

COMMENTER: Charles E. Wenger, Poultry Grower

COMMENT: If these additional regulations are enacted, I foresee growers having a more difficult time of distributing litter; which may mean more concentrated areas of litter storage. Furthermore, I foresee less productive pastures and hayfields due to the lack of nutrients and organic matter. The agriculture industry is currently handling, storing, and applying poultry litter in an environmentally friendly manner that is both efficient and productive. Please reconsider your proposals before enacting needless regulations that will have impacts across the agriculture community.

COMMENTER: Henry E. Wood, Jr.; President - Buckingham County Farm Bureau

COMMENT: Keep the regulations as easy as possible on the end users, because by and large, farmers are frugal individuals and they are not going to spend more money than they have too. Litter is a very valuable asset, a very valuable fertilizer ingredient works well in farming operations and if we get too many regulations on the end users, I am afraid we going to see litter pile up.

COMMENTER: Reid Mackey - Poultry Waste Broker/ Hauler

COMMENT: My concern is that these proposed additions to the regulations could eventually make using poultry litter so much trouble for the end user that I will not be able to sell the portion of the litter that exceeds what my nutrient management plan will allow me to use in my own farming operation. If I am to continue to operate as a poultry grower and can't get rid of the litter what would DEQ propose I do with the litter?

COMMENTER: William Cole, Amelia County Poultry Grower

COMMENT: Over the years we have found it hard to move our litter, but now with the price of fertilizer so high more farmers are using the litter. We do not want to discourage this use by placing so many regulations on the end user. You will find most farmers take pride in their operation & the land tells you what it needs by the crop it produces.

COMMENTER: Gayle & Bill Rogers, Chesterfield County Poultry Grower

RESPONSE: DEQ acknowledges the economic benefit to use poultry waste as fertilizer. Some farms that have been using poultry litter and have high soil test phosphorus may be negatively impacted by the cost of needing to purchase commercial nitrogen. However, due to the cost of commercial fertilizer, there are many farmers that have desired to use poultry waste but have not been able to do so because it is in limited supply. The proposed regulations will require that more poultry waste be moved off farms that have historically received high amounts, resulting in an additional supply. The economic impact to the farms that can no longer use poultry waste will be offset by the economic benefit to the farms that can now obtain the material. Due to the demand, it is unlikely that litter would accumulate on poultry farms that would result in environmental consequences. *No changes are being proposed to address this comment.*

#### **GC-9 SUBJECT: AG STEWARDSHIP ACT**

COMMENT: Ag Stewardship Act in Virginia which is in place to address the bad Actors we have across the State, most farmers, almost all farmers are very responsible citizens on how they apply their litter and how they apply their fertilizers but there are some bad actors out there; and it would be my hope that the State would beef up that program, put more funding into that and allow the Ag Stewardship program to take care of those folks who truly are in violation instead of imposing more burdens on everyone else.

COMMENTER: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

COMMENT: VDACS does not see a need or basis for the proposed amendments that would address the off-site management of poultry waste. In the almost thirteen year existence of VDACS' Agricultural Stewardship Act program, we have handled very few complaints involving the storage and/or land application of poultry litter by another entity other than the poultry grower. With the exception of one unique and isolated case, poultry litter complaints we have received have been resolved fairly easily.

COMMENTER: Todd Haymore, Commissioner - VDACS

COMMENT: We believe that the Agricultural Stewardship Act sufficiently addresses any pollution problems related to poultry litter "end-users."

COMMENTER(S): Hobey Baughan, President - Virginia Poultry Federation

Roger Hatcher, President - Cumberland County Farm Bureau

COMMENT: Poultry litter end-users are already subject to enforcement under the Ag Stewardship Act. If end-users are truly causing a water quality problem they should be reported to VDACS for any alleged violation. There is no need to have any additional regulation.

COMMENTER: Freddy Holland - Poultry Grower

COMMENT: The Ag Stewardship exists to investigate and address complaints of water quality problems that may arise from farming activities that may be performed inadequately or incorrectly.

COMMENTER: Bruce Holland - Poultry Grower

COMMENT: A regulatory or agency guidance proposal that aids DEQ in collecting the currently required transfer information without additional management and enforcement requirements for growers, brokers and end-users would be welcomed. The Agricultural Stewardship Act is suitable for addressing and enforcing improper and inadequate poultry waste utilization and storage among persons other than permitted poultry growers. The Agricultural Stewardship Act is a complaint driven program that includes on-site investigations, and education component for all complaints, seeks corrective action via

implementation of a VDACS approved plan, enforcement provisions and an appeals process for both the complainant and the farmer.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

COMMENT: The Ag Stewardship Act is designed to address bad actors.

COMMENTER: Headwaters Soil and Water Conservation District - Land Use Committee

COMMENT: The Agricultural Stewardship program is not equipped to address the problems associated with improper land application of poultry waste. It is a complaint driven process and excess application may not generate a complaint because it is usually not visually apparent.

COMMENTER: Jeff Kelble - Shenandoah Riverkeeper

RESPONSE: The DEQ regularly receives complaints regarding the application or storage of transferred poultry waste. In most cases, once the complainant learns there are no regulations governing transferred waste, they do not pursue the complaint any further. Also, the Agricultural Stewardship program is a complaint driven process, and over-application of manure is not a practice that is readily apparent that would necessarily generate a complaint. *No changes are being proposed to address this comment.*

*GC-10 SUBJECT: SCIENCE DOCUMENTING NEED FOR AMENDMENTS*

COMMENT: The agency has not adequately documented and quantified the contribution of transferred poultry litter to nutrient runoff. The proposal is based largely on perceptions about poultry litter, not hard science revealing the extent to which nitrogen and phosphorus from litter enter Virginia streams, rivers, and the Chesapeake Bay. We acknowledge some nutrient loss from transferred poultry litter, but question its contribution relative to other larger sources.

COMMENTER: Hobey Baughan, President - Virginia Poultry Federation

Roger Hatcher, President - Cumberland County Farm Bureau

COMMENT: We ask if these changes are the result of short falls in the existing system. Are these proposed changes backed by good science?

COMMENTER: Headwaters Soil and Water Conservation District - Land Use Committee

COMMENT: Farm Bureau does not believe that DEQ or any other state entity has adequately documented or quantified an actual water quality problem resulting from poultry waste transfer. DEQ has not documented any enforcement actions regarding transferred poultry waste through its own action or any founded complaints and enforcement actions under the Agricultural Stewardship Act.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

COMMENT: None of these proposed regulations seem to be supported by evidence requiring such.

COMMENTER: Henry E. Wood, Jr.; President - Buckingham County Farm Bureau

COMMENT: I am an end user of poultry litter and have found it to be viable form of fertilizer. Those of us who farm are finding it very difficult to continue our farming operations due to the escalating expenses and conforming to all the regulations that have been imposed on us. We certainly do not need additional regulations and especially the ones being considered when I am told there have been no cases documenting the need for such. I am respectfully requesting that you consider the struggles the farmers are currently having just to remain in business and will not add additional regulations which in turn will mean more work and expense.

COMMENTER: C. Wayne Keener

COMMENT: My understanding is that there have been few if any documented cases of environmental contamination due to incorrect application of poultry litter.

COMMENTER: William Cole, Amelia County Poultry Grower

COMMENT: Speaking from a poultry grower's standpoint for over 18 years, it is becoming more and more difficult on a daily basis to operate our family farm. We are slowly being "choked out" by rules and regulations impacting us both emotionally as well as economically while there have been no documented cases of poultry litter being mishandled in a way that diminishes water quality.

COMMENTER: Charles Wenger, Poultry Grower

RESPONSE: Research has shown that misapplied poultry litter can result in water quality problems, primarily related to nutrients and pathogens, thus those are the focus of the regulatory requirements. *No changes are being proposed to address this comment.*

COMMENT: Why is it always assumed that farmers do not care about clean water?

COMMENTER: Jackie and Howard Easter - Amelia County Poultry Grower

COMMENT: Once again agriculture is being singled out as the culprit for any and all water quality problems in the Chesapeake Bay without any actual data to support the renewed allegation.

COMMENTER: Freddy Holland - Poultry Grower

COMMENT: What is the documented evidence that poultry litter end-users are enough of a problem to justify creating a regulation?

COMMENTER: Bruce Holland - Poultry Grower

COMMENT: We ask you review the proposed technical amendments to ease any change that would result.

COMMENTER: Rick Shiflet, Land Use Committee - Augusta County Farm Bureau Federation

RESPONSE: DEQ regularly receives complaints regarding the application or storage of transferred poultry waste, making the agency aware that some farmers do not follow appropriate best management practices (BMPs). Research has shown that misapplied poultry litter can result in water quality problems. There is inadequate data to quantify the number of farmers properly managing poultry waste versus those that follow appropriate BMPs. Thus the proposed regulations were developed in such a way as to cause minimal disruption to those farmers that are properly managing poultry waste. *No changes are being proposed to address this comment.*

#### ***GC-11 SUBJECT: REGULATE ALL SOURCES OF NUTRIENTS***

COMMENT: Tyson is a supporter of Nutrient Management regulations. In fact, we strongly encourage all independent poultry producers that contract with Tyson to obtain a Nutrient Management Plan (NMP), regardless of whether their local or state regulations require an NMP. VDEQ should include all forms on nutrients (including commercial fertilizer) into this regulation. If nutrients are going to be regulated, then all sources of nutrients should be regulated.

COMMENTER: Jamie Burr - Tyson Foods, Inc.

COMMENT: Furthermore, these regulations are more stringent than that of commercial fertilizer. It seems that you would be pleased with the utilization of organic sources of nutrients, but your proposed regulations tell otherwise.

COMMENTER: Henry E. Wood, Jr.; President - Buckingham County Farm Bureau

COMMENT: In many cases, unregulated sources of nutrients will replace litter as a source of nutrients for farmland.

COMMENTER(S): Hobe Baughan, President - Virginia Poultry Federation

Roger Hatcher, President - Cumberland County Farm Bureau

RESPONSE: Regulation of commercial fertilizer application rates is not within the scope of § [62.1-44.17:1.1](#) of the Code of Virginia. *No changes are being proposed to address this comment.*

#### ***GC-12 SUBJECT: MISCELLANEOUS COMMENTS***

COMMENT: VFBF is concerned that industry and state efforts to encourage redistribution of poultry litter from areas of potential surplus to nutrient deficit areas will be stymied by additional regulation and unnecessarily raise conservation program costs and divert limited conservation funding from other needed practices. It has taken considerable time and a cost-share program funded by the poultry companies and the Department of Conservation and Recreation to build the current demand for poultry litter.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

RESPONSE: The proposed regulations will require that more poultry waste be moved off farms that have historically received high amounts, resulting in an additional supply. The demand for poultry litter as a fertilizer will offset any issues associated with cost-share assistance. Not all farmers that utilize poultry litter will seek cost-share assistance. *No changes are being proposed to address this comment.*

COMMENT: Cruelty to animals needs to be included.

COMMENTER: Mary Rose Curtis

RESPONSE: Regulation of animal cruelty is not within the scope of § 62.1-44.17:1.1 of the Code of Virginia. *No changes are being proposed to address this comment.*

COMMENT: The burden of treating poultry waste should fall on the large corporations that own the chickens, who have the financial resources to build treatment plants and institute other measures to ensure that poultry waste does not enter into our waters untreated.

COMMENTER: George Sorvalis

RESPONSE: The responsibilities of the poultry integrators are outlined in § 62.1-44.17:1.1 of the Code of Virginia. Comments are unrelated to the proposed amendments. *No changes are being proposed to address this comment.*

COMMENT: I remain concerned about the on-site disposal of dead poultry during the Avian flu epidemic a few years ago with what appeared to be absolutely no concern for where the diseased birds were buried. As if the diseased birds decomposition wouldn't seep into nearby streams and waters.

COMMENTER: Patricia Williams

RESPONSE: The Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management prohibits the use of disposal pits for routine disposal of daily mortalities; however this prohibition does not apply to emergency disposal of dead poultry in cases of catastrophic losses which are due to Avian Influenza and other disease outbreaks. The Virginia Department of Agriculture and Consumer Services and the Virginia Solid Waste Regulations mandate the requirements regarding disposal in these cases. During the Avian Influenza outbreak several years ago the Department of Environmental Quality and the Virginia Department of Agriculture and Consumer Services worked closely with the poultry industry to ensure compliance with the regulations. *No changes are being proposed to address this comment.*

COMMENT: The regulations for the land application for poultry litter should be no less stringent than regulations for the land application of sewage sludge. Both kinds of waste are inefficient fertilizers and cause massive nitrogen and phosphorus pollution compared to conventional chemical fertilizers. Animal wastes contain fecal coliform bacteria, and substances such as antibiotics and/or heavy metals that must be regulated so contamination does not occur in the Chesapeake Bay watershed, a body of water formally impaired by EPA.

COMMENTER: Lynton Land

RESPONSE: The statutory requirements pertaining to regulation of sewage sludge (§ 62.1-44.19:3. of the Code of Virginia) differ from those pertaining to poultry waste (§ 62.1-44.17:1.1. of the Code of Virginia). These differences are related to the sources, amounts and makeup of potential contaminants in sewage sludge versus poultry waste. Research has shown that misapplied poultry litter can result in water quality problems, primarily related to nutrients and pathogens, thus those are the focus of the regulatory requirements. *No changes are being proposed to address this comment.*

COMMENT: No fee structure is imposed, as is done in 9VAC25-20-146 for the land application of sewage sludge, to reimburse localities for oversight costs and to reimburse the State for implementing the land application program.

COMMENTER: Lynton Land

RESPONSE: § 62.1-44.15:6.B1. of the Code of Virginia states "...notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market..." *No changes are being proposed to address this comment.*

COMMENT: Research should be conducted to investigate the use of poultry waste to generate energy.

COMMENTER: Penny Manners

COMMENT: If we can make horse and cow manure into fertilizer, we can certainly do the same with chicken waste and, while we're at it, help protect our waterways. Of course, that means the poultry industry will have to collect it, but they could profit by selling it to processors. Virginia needs to look at the possibilities and develop regulations that encourage the reuse of chicken waste.

COMMENTER: Pat Dunlap

COMMENT: If the Commonwealth moves forward with the regulation, we ask that the state seek to accelerate development of alternative uses of poultry litter and make the effective date of the proposed regulation contingent upon availability of alternative uses.

COMMENTER(S): Hobey Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau

RESPONSE: DEQ is supportive of research efforts, some of which are ongoing, to develop alternative uses for poultry waste where appropriate. *No changes are being proposed to address this comment.*

**SPECIFIC SECTION COMMENTS**

**SC-1 SUBJECT: DEFINITIONS/ TERMINOLOGY**

COMMENT: The term “waste” indicates that a product no longer has a beneficial use. Poultry litter is an excellent source of nutrients for plant growth and increases soil tilth, therefore should not be considered a waste.

COMMENTER: Jamie Burr - Tyson Foods, Inc.

RESPONSE: “Poultry waste” is the term used throughout § 62.1-44.17:1.1. of the Code of Virginia, thus it is likewise used in the regulation. *No changes are being proposed to address this comment.*

COMMENT: The proposed changes to the General Permit include requiring a poultry grower provide a “fact sheet” if five tons or more of poultry [litter] is transferred to another person. The terminology “fact sheet” is extremely broad and ambiguous. This terminology does not provide direction to a grower as to what is an acceptable “fact sheet.” Tyson recommends that specific reference to an acceptable “fact sheet” be incorporated into the General Permit. For instance, the Department should list specific fact sheets, such as Virginia Cooperative Extension articles. An example of a specific article would be publication # 442-052, “Land Application of Broiler and Turkey Litter for Farming Operations without a DEQ Permit.”

COMMENTER: Jamie Burr - Tyson Foods, Inc.

RESPONSE: The term “fact sheet” is defined in Section 9VAC25-630-10 as “the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department, in consultation with the Department of Conservation and Recreation.” The DEQ fact sheet has been in use since the year 2000 under the current regulatory requirements. DEQ will develop a new fact sheet based on changes to the regulation, and there will be only one document that meets the requirements. *No changes are being proposed to address this comment.*

COMMENT: It is unclear as to whether the rate of 1.5 tons is already the “standard rate” or if further action has to be taken by the “board” to determine this amount. If 1.5 tons is already the standard rate, Tyson recommends that 1.5 tons be incorporated into the definition.

COMMENTER: Jamie Burr - Tyson Foods, Inc.

RESPONSE: Section 9VAC25-630-80.C.1.A of the regulation specifies that the standard rate is 1.5 tons per acre once every three years. No further action is necessary to define this rate. *No changes are being proposed to address this comment.*

**SC-2 SUBJECT: TONNAGE THRESHOLD TO TRIGGER RECORDKEEPING**

COMMENT: Raise that number at least back to the original 10, personally I would like to see it raised to 15 or 20 because there are a lot of people who are traditional farmers but they have gardens, large gardens, produce areas and even small farms that they do use 10 or 15 or 20 tons poultry litter a year.

COMMENTER: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

COMMENT: Change threshold from 5 tons, personally I would like to see it go up to 15 or 20 but at least leave it at 10.

COMMENTER: Jeff Good

COMMENT: Take it back up to 10, move it up to 20 or 30.

COMMENTER: Mark Deavers - Poultry Waste Broker

COMMENT: I feel like 10 tons is a small enough threshold to require in the regulations.

COMMENTER: Will Sanderson, Cumberland County Poultry Grower

COMMENT: Having a threshold of 5 tons in one year adds additional burden for anyone getting slightly more than gardeners.

COMMENTER: Henry Wood, Jr., President - Buckingham County Farm Bureau

COMMENT: I am opposed to the reduction of 10 tons to 5 tons as the minimum threshold.

COMMENTER: Lareth May, Poultry Grower



COMMENT: The 5 ton minimum for regulation is much too low and at least the minimum should remain at 10 tons.

COMMENTER: William Cole, Amelia County Poultry Grower

COMMENT: VPF opposes the reduction in the minimum threshold for regulation of litter transfers from 10 tons to 5 tons. Ten tons has been adequate as a minimum threshold.

COMMENTER: Hobey Baughan, President - Virginia Poultry Federation

Roger Hatcher, President - Cumberland County Farm Bureau

COMMENT: The 5 ton threshold is too low and less than one truckload.

COMMENTER: Freddy Holland - Poultry Grower

Bruce Holland - Poultry Grower

COMMENT: The proposed threshold of "5 or more tons" for triggering the proposed regulatory changes is too low and should be changed to "15 or more tons" or left at "more than 10 tons". The proposed threshold volume is equivalent to approximately 3 full-size pick-up loads and less than the amount of litter typically hauled by one poultry litter spreader truck or spreader buggy.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

COMMENT: Strongly supportive of the proposed regulations regarding the management, tracking and testing of poultry waste and the use of poultry waste. More specifically, we support the change from a maximum of 10 tons to a new maximum of 5 tons that would require record keeping and reporting of transfers

COMMENTER(S): Don Sims, Float Fisherman of Virginia

Bill Tanger, Friends of the Rivers of Virginia

COMMENT: We especially strongly support the following requirements at 9VAC25-630-60 that brokers maintain detailed records regarding transfer of amounts of poultry waste equal to or greater than 5 tons in any 365-day period. This record-keeping requirement is important to help ensure that DEQ and citizens know where these wastes go and be able to trace problems when they occur. We agree that exemption from the full record-keeping requirements for very small transfers of poultry waste may be acceptable and feel that 5 tons is a reasonable cut-off point. Some have commented that this cut-off amount should be raised to 10 tons per year but, to our knowledge, have provided no technical justification to show that 10 tons is more appropriate than 5 tons. In fact, there is no specific technical justification for any particular tonnage threshold. The fact remains that any amount of waste transferred and land-applied could cause environmental problems and this de minimis threshold is based only upon the perception that lower amounts present lower levels of risk. Requirements at 9VAC25-630-70 that end-users maintain detailed records when they accept greater than 5 tons per year. As stated above, these detailed records are vital to ensure that DEQ can properly assess environmental impacts from these transfers and that other citizens know what is being done in their neighborhoods. Also as above, no technical factors provide specific justification for any particular threshold amount. The smaller the number, the less risk that problems will occur. The safest approach would require that detailed records be required for all transfers, no matter how small, and is as easily justified as any threshold we can set.

COMMENTER: David Sligh, Upper James Riverkeeper - James River Association

COMMENT: The rule calls for certain records if over 5 tons are given to a party in any 365 days. That does not appear to be workable. The only solution is to require records for all transactions without the 5 ton cutoff.

COMMENTER: Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River  
Margaret Lorenz, Friends of the North Fork of the Shenandoah River

COMMENT: .We support the inclusion of the reporting threshold from ten tons per year to five tons per year.

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

RESPONSE: DEQ proposed dropping the threshold which triggers a poultry grower or poultry waste broker would have to keep records in order to ensure that the majority of transferred poultry waste was managed properly. Staff determined that lowering the recordkeeping threshold to five (5) tons will not provide significant additional water quality protection than the original threshold of 10 tons. Most

poultry litter applied commercially is delivered in multiple spreader truck loads, each holding eight (8)-10 tons. In addition, the regulation requires that the technical requirements for poultry waste storage and use be followed for any amount of litter applied. The 10 ton threshold will focus the enforcement of the requirements on the majority of transferred waste. *The tonnage threshold which triggers recordkeeping has been changed back to 10 tons in the final amendments.*

**SC-3 SUBJECT: RECORDKEEPING OF POULTRY WASTE TRANSFERS**

COMMENT: As part of the required records for litter transfer to someone other than a broker, the proposed changes to the General Permit requires the poultry grower to keep a record of the locality in which the recipient intends to utilize the [litter]. The record of where a 3rd party land applies poultry litter should be the responsibility of the end user, not the grower, whom has no control over where the 3rd party may actually utilize the litter. Tyson recommends that the poultry grower only be responsible for maintaining the name and address of the 3rd party, not the location of where the litter was spread. Furthermore, Tyson recommends that language be incorporated into the changes to the general permit that specifically states that a poultry grower is not responsible for any actions taken by an end user or broker of poultry litter.

COMMENTER: Jamie Burr - Tyson Foods, Inc.

RESPONSE: The location of the final destination of the poultry waste is an important component of the tracking process, particularly when the farm where it is to be applied is located far from the end-user's mailing address. The regulation is specific as to the regulatory requirements of the poultry grower. *No changes are being proposed to address this comment.*

COMMENT: I am concerned about monitoring the amounts and sources applied to farms and gardens.

COMMENTER: John C. Barber, Sr.

RESPONSE: The existing regulation language sets forth recordkeeping requirements regarding the amount and source of poultry waste transfers. These requirements are not being removed in the proposed amendments. *No changes are being proposed to address this comment.*

COMMENT: We believe that the record keeping period should be extended from 3 years to 5 years.

COMMENTER(S): Don Sims, Float Fisherman of Virginia

Bill Tanger, Friends of the Rivers of Virginia

RESPONSE: A three (3) year retention time for maintaining required records is based on consistency with the requirements for the permitted poultry grower, as well as the requirements found in the VPA permit regulation (9VAC25-32) related to records maintenance. It is not apparent that environmental benefit would be achieved by extending the retention period from three (3) to five (5) years. *No changes are being proposed to address this comment.*

**SC-4 SUBJECT: GROWER TRAINING**

COMMENT: Please make [training] user friendly

COMMENTER: David Lovell, Accomack County Poultry Grower

COMMENT: Undue burden placed on the small volume or less frequent user due to the training requirement.

COMMENTER: Robert Runkle, Chairman - Culpeper Soil and Water Conservation District

COMMENT: I am opposed to attending training every 5 years.

COMMENTER: Freddy Holland - Poultry Grower

COMMENT: Opposed to grower training.

COMMENTER: Mark Deavers - Poultry Waste Broker

COMMENT: 9VAC25-630-30.A.6 includes new language that requires poultry growers to complete a training program at least once every five years. Section 9VAC25-630-30.B.2.d also requires end users or brokers to obtain training at least once every five years. It is unclear as to who is responsible for developing the curriculum for this training, what training would qualify as meeting this requirement, how a grower would know when such training is available, and who has fiscal responsibilities of the training. Tyson recommends that these items be clearly addressed prior to finalizing changes to the permit.

COMMENTER: Jamie Burr - Tyson Foods, Inc.

RESPONSE: In order to keep costs at a minimum and make participation less burdensome, DEQ intends to incorporate this training into other meetings, conferences and events that poultry growers, brokers and end users typically attend. These venues may include meetings sponsored by DEQ, DCR, Virginia Cooperative Extension and industry groups. *No changes are being proposed to address this comment.*

COMMENT: Permitted poultry growers should not be required to attend education sessions once every 5 years as proposed. Permitted growers are required to obtain training when they seek initial permit coverage. Permitted growers also receive one-on-one education tailored to their farming operation from DEQ staff during the annual farm inspection. Furthermore, this proposed change does not directly support the stated purpose of the Notice of Intended Regulatory Action to address concerns regarding the transfer and offsite management of poultry waste.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

COMMENT: It is burdensome and overkill to require permitted poultry growers to attend training every five years. Under the existing regulations, growers receive training when they file for coverage under the VPA General Permit for Poultry Waste Management. Subsequently, they receive an annual inspection from DEQ. Any new information is communicated to the growers during their annual inspection. The program has been working fine; poultry growers have come to understand the requirements, and it is simply unnecessary to have them attend additional training sessions. VPF, Virginia Cooperative Extension, and soil and water conservation districts also offer educational opportunities for growers. And, in accordance with the Poultry Waste Management Act, poultry processors provide technical assistance and education for their contract growers on these topics.

COMMENTER: Hobey Baughan, President - Virginia Poultry Federation

Roger Hatcher, President - Cumberland County Farm Bureau

COMMENT: Requiring growers to require attend training every 5 years, when under the existing regulations, growers receive training when they file for coverage under the VPA general permit poultry waste management. We believe that the current regulatory process provides for annual DEQ inspection where new information can be directly passed from the DEQ Inspector to the poultry grower and where poultry processors are required to provide technical assistance education for there growers. In addition education opportunities are available from the Virginia Poultry Federation, Virginia Cooperative Extension and Soil and Water Conservation districts

COMMENTER: Katie K. Frazier, Vice President - Public Affairs

RESPONSE: The requirement for the permitted poultry grower to attend more than one training session is consistent with the Virginia Pollution Abatement General Permit for Animal Feeding Operations in that the livestock operators must attend training once every three years. DEQ intends to work with the poultry industry associations and commercial processors to facilitate opportunities for growers to obtain credit for training received during industry events and meetings. *No changes are being proposed to address this comment.*

COMMENT: Is there anyway we can get around having so much training for the end grower it would help with having more choices of where I can sell my chicken litter to the to highest bidder.

COMMENTER: Donald Bishop, Cumberland County Poultry Grower and Cumberland County Anaerobic Digester Project

COMMENT: Any required training should be provided at the local level and easily accessible to the producer.

COMMENTER: Robert Runkle, Chairman - Culpeper Soil and Water Conservation District

RESPONSE: DEQ intends to work with the poultry industry associations and commercial processors to facilitate opportunities for growers to obtain credit for training received during industry events and meetings. *No changes are being proposed to address this comment.*

SC-5 SUBJECT: GROWER ANNUAL REPORTING/ RECORDKEEPING

COMMENT: Make [recordkeeping] simple

COMMENTER: David Lovell, Accomack County Poultry Grower

COMMENT: Permitted growers should not be required to submit copies of poultry waste transfer records to DEQ on an annual basis. This information is available for collection by DEQ staff during the annual

farm inspection. This provision is a convenience for DEQ that does not impact water quality but creates a burden for the permitted poultry grower.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

COMMENT: VPF opposes the proposal to require permitted growers to file annual reports to DEQ. Again, the growers are used to the current system of making the records available to DEQ during the annual inspection, and it is an unnecessary burden to have them submit the records to DEQ by a certain date. Please remember that these are small family farms (without clerical staff) juggling many tasks - many with important deadlines dictating when to feed, plant, spread manure, and other aspects of farming. While growers, overall, have had an excellent record of compliance with the record keeping requirements under the existing regulations, we are concerned that the additional burden of reporting by a date-certain will create compliance problems. Rather than the efficient use of inspectors' time, they may end up spending an inordinate amount of time trying to get farmers to file reports. The current system is not broken, so please leave it as is.

COMMENTER: Hobey Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau

COMMENT: I feel that reporting outside of the inspection is going to be an extra burden to the growers, whether by mail or by fax, by phone it is going to add an extra burden and probably will not get done without enforcement.

COMMENTER: Will Sanderson, Cumberland County Poultry Grower

COMMENT: We support the inclusion of requiring permitted growers and poultry litter brokers to report annually to DEQ.

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

COMMENT: We have concerns about requiring permitted growers to file annual reports to DEQ versus the current system of making records available to DEQ during annual farm inspections. We believe that growers have a track record of compliance with the recordkeeping requirements under existing regulations.

COMMENTER: Katie K. Frazier, Vice President - Public Affairs

COMMENT: Opposed to any additional permitting, filing of annual reports or any other recordkeeping by the growers which are beyond what is currently required at annual inspections.

COMMENTER: Lareth May, Poultry Grower

Mark Deavers - Poultry Waste Broker

RESPONSE: It is recognized that the poultry growers' records are obtained at the annual inspection and that this information can be requested at any time under the current requirements. The annual report requirement was added to address a timing issue only. *The annual report requirement has been removed from the final amendments.*

#### **SC-6 SUBJECT: PERMITTED ENTITY REQUIREMENTS**

COMMENT: We support:

1. a required nutrient management plan (NMP) that must be approved by the Department of Conservation and Recreation (DCR)
2. the requirement that the NMP be developed by a certified nutrient management planner
3. the monitoring requirements to determine levels of nutrients in soils and stored chicken waste

COMMENTER(S): Don Sims, Float Fisherman of Virginia; Bill Tanger, Friends of the Rivers of Virginia

RESPONSE: DEQ acknowledges support for the concepts included in the proposed regulation and adds clarification that a nutrient management plan approved by VA DCR is only required of the permitted grower, and a nutrient management plan is one option for an end-user to determine the application rate. *No changes are being proposed to address this comment.*

#### **SC-7 SUBJECT: TECHNICAL REQUIREMENTS - METHODS TO DETERMINE LAND APPLICATION RATE**

COMMENT: It shouldn't be up to me [a poultry grower] to have to determine what method is used by the recipient to determine that [land application] rate is going to be; that should be between the end user and DEQ but it shouldn't be the producer that has to indicate that. If we have to tell our end users how they to have apply and at what rate there are going to be a lot of unhappy customers that we have to serve.

COMMENTER: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

COMMENT: Requiring growers to collect the planned methods of determining litter application rates from end users is not the responsibility of the grower or the broker.

COMMENTER: Henry E. Wood, Jr.; President - Buckingham County Farm Bureau

COMMENT: Opposed to asking what the consumer does with the litter, it's not my business, end user needs to record and give to DEQ to keeps brokers and growers from policing it for DEQ.

COMMENTER: Jeff Good

COMMENT: Don't want to be a policeman by asking how the rate was determined.

COMMENTER: Reid Mackey - Poultry Waste Broker/ Hauler

COMMENT: Requiring growers and brokers to collect from end-users information about how they intend to use the transferred litter (crop type and application rate determination method) will have growers and brokers in the undesirable position of policing end-users. If DEQ is insistent that this information be captured, then "unknown" should be an acceptable response option.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

COMMENT: VPF opposes the proposed requirement that poultry growers and poultry litter brokers and haulers keep a record, if known, of how end-users intend to apply poultry litter. We oppose even the suggestion that poultry growers or brokers have any oversight or responsibility for how end-users apply litter. Asking growers and brokers to question end-users about their management intentions could be interpreted by the end-user as a projection of oversight by the litter provider. The intrusiveness and of this awkward inquiry will likely cause most brokers and growers to mark the form, "unknown." Thus, the information will be incomplete. We therefore question the utility of even asking for this inquiry to be made.

COMMENTER: Hobey Baughan, President - Virginia Poultry Federation

Roger Hatcher, President - Cumberland County Farm Bureau

COMMENT: I am opposed to the following: requiring growers to inspect, demand or keep records on how end users utilize or apply the litter. That should not be a requirement for growers to keep track of; what business is this of mine to tell another producer how to use his product. This is not something that growers should be required to keep.

COMMENTER: Lareth May, Poultry Grower

RESPONSE: The recordkeeping requirement related to which method is used to determine the land application rate was proposed in order to facilitate in determining and quantifying nutrient reductions. It was determined that this information will not provide the agency with conclusive data to determine actual nutrient reduction, so it is not necessary to require the information to be recorded. *The recordkeeping item has been removed from the final amendments.*

COMMENT: The requirement for the poultry grower and broker to record the method by which the end user intends to determine the application rate is an important aspect of end user education. The recordkeeping requirement will help facilitate communication between poultry litter suppliers and end users about regulatory requirements for land application. Without this information, DEQ will have no means to assess the effectiveness of this program.

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

RESPONSE: The recordkeeping requirement related to which method is used to determine the land application rate was proposed in order to facilitate in determining and quantifying nutrient reductions. It was determined that this information will not provide the agency with conclusive data to determine actual nutrient reduction, so it is not necessary to require the information to be recorded. The requirements for the end user will be communicated via the fact sheet when litter is transferred. The effectiveness of the program will be better measured by increased litter availability in areas outside those with concentrated

poultry production, increases in nutrient management planning in areas to which litter is transported, and more effective resolution of complaints where poultry litter is not managed in a manner protective of the environment. *The recordkeeping item has been removed from the final amendments.*

COMMENT: Supports providing the end user a variety of methods to determine their application rates.

COMMENTER: Todd Haymore, Commissioner - VDACS

COMMENT: The following proposal, I find to be reasonable, having the end user to utilize soil samples and application rates following best management practices for the crop growth.

COMMENTER: Lareth May, Poultry Grower

RESPONSE: DEQ acknowledges the support. *No changes are being proposed to address this comment.*

**SC-8 SUBJECT: TECHNICAL REQUIREMENTS - STANDARD RATE**

COMMENT: 1½ tons over a three years is not a lot of litter at all, that's a ½ tons a year most crops at a minimum are able to absorb at least a ton a year and certainly the phosphorus levels will not be billed up at one ton a year, so I think another small suggestion would be to raise that standard rate up instead of 1½ tons for three years at least consider making it one ton a year; that way a lot of small producers will not have to fall under the regulations, which I think would certainly ease the enforcement aspect of it.

COMMENTER: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

COMMENT: Of serious concern is the prohibition of applying poultry litter with a soil analysis to 1.5 tons per acre of no more than every three years. Adding organic matter to the soil is one of the best ways to build healthier soil and a thicker and better sod of grass. This thicker crop cover will further reduce sediment and nutrient runoff to waterways.

COMMENTER: Henry E. Wood, Jr.; President - Buckingham County Farm Bureau

COMMENT: Raise 1.5 tons for every three years to 2 tons per year. Applications of 2 tons of litter per year on a growing crop, hay or pasture field is not too much you can't get that much runoff of anything by applying 2 tons per year, a crop can utilize that.

COMMENTER: Lareth May, Poultry Grower

Mark Deavers - Poultry Waste Broker

COMMENT: I support more frequently than 1½ tons for every three years.

COMMENTER: Reid Mackey - Poultry Waste Broker/ Hauler

COMMENT: End-users should be allowed to apply poultry waste to any crop at a standard rate of 2 tons per acre once every three years instead of 1.5 tons per acre as proposed. This slight increase in the standard rate will allow interested and willing farmers to try poultry litter as a fertilizer alternative to a greater number of crops than just pasture or hay. Increasing the standard rate to 2 tons, coupled with the proposed buffers, will not result in any water quality issues when 2 ton rate of poultry litter is applied [to] permanent pasture and hay.

COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

RESPONSE: The proposed option of applying 1.5 tons of poultry waste per acre once every three (3) years without requiring a soil test was added to the technical requirements in order to allow flexible options for obtaining appropriate land application rates while protecting water quality. The standard rate is only one of four (4) options by which a farmer/ producer can determine their land application rate. If a higher rate is desired one of the other options may be used. *No changes are being proposed to address this comment.*

COMMENT: In order to qualify for the 1.5 ton standard rate every 3 years without conducting soil testing, either:

a) disqualify land within known high-nutrient counties like Rockingham, Northern Augusta, Page, Shenandoah, Accomack, and Northampton; or

b) require that poultry waste be transported to land more than X number of miles (80-100) from where it is produced

COMMENTER: Jeff Kelble - Shenandoah Riverkeeper

COMMENT: Delete the option to apply 1.5 tons poultry waste every 3 years without requiring a soil test.

COMMENTER: Lynton Land

RESPONSE: The proposed regulation states that in order to utilize the option of applying 1.5 tons of poultry waste per acre once every three (3) years without requiring a soil test, nutrients may not have been supplied by an organic source of fertilizer during the three (3) years preceding the application. It is not probable that a field that has received only commercially blended fertilizer will have extremely high soil test phosphorus levels, and the phosphorus in the 1.5 ton application rate will be utilized by a three (3) year crop rotation. Soils with high phosphorus levels are likely to have received organic sources of nutrients and thus will be disqualified from this option. Further, distance from a poultry farm and nutrient content of the soil are not always directly related. The proposed regulation imposes a field-specific criterion, rather than a geographic criterion, in order that fields in need of phosphorus might not be disqualified simply based on location. *No changes are being proposed to address this comment.*

**SC-9 SUBJECT: TECHNICAL REQUIREMENTS - PHOSPHORUS CROP REMOVAL LEVELS**

COMMENT: Lower the soil test phosphorus level above which an end-user would be required to utilize nutrient management planning because no crop response to additional phosphorus is expected at the levels proposed. The level should be reduced to 55 ppm.

COMMENTER: Jeff Kelble - Shenandoah Riverkeeper

RESPONSE: The proposed regulation allows poultry waste to be applied at phosphorus crop removal rates when soil test phosphorus levels do not exceed 35% saturation, which range from 135-162 ppm, depending on the geographic region. If soil test results are above these levels, a nutrient management plan must be used to determine the application rate. These levels are based on guidelines found in the Virginia Department of Conservation and Recreation Nutrient Management Standards and Criteria. While no crop response is expected, an application rate limited to crop removal will prevent phosphorus loss due to saturation at the proposed soil test levels, and is consistent with the application rate that could be recommended in a DCR nutrient management plan. *No changes are being proposed to address this comment.*

COMMENT: Prohibit phosphorus applications if the soil test phosphorus level is above 55 ppm. Require that poultry waste application rates be based on soil test results and that application rates for nitrogen and phosphorus be limited to those specified in the Virginia Agricultural Land Use Evaluation System (VALUES).

COMMENTER: Lynton Land

RESPONSE: The proposed regulation offers several different methods to determine the application rate. None of the methods allow nitrogen application above the agronomic rate, and the methods to determine phosphorus application rate all consider the risk of phosphorus loss to the environment and minimize that risk. *No changes are being proposed to address this comment.*

**SC-10 SUBJECT: TECHNICAL REQUIREMENTS - RECORDKEEPING**

COMMENT: Much of the information about where litter is applied and how much is applied is already available through my records as a grower and spreader of poultry litter therefore it seems unreasonable to burden end users with additional recordkeeping what may cause them to decide that using poultry litter is too much trouble. Some end users will balk at the additional recordkeeping and documentation required.

COMMENTER: William Cole, Amelia County Poultry Grower

COMMENT: In terms of amendments to the existing regulations to include additional utilization and storage requirements, in my mind, will be both detrimental to farmers in general as well as contradictory to already existing regulations. It is already mandated that poultry growers, as well as brokers, keep records as to where litter is going, how much litter is being transferred, nearest waterways being effected, as well as "open book" audits by DEQ whenever they request them.

COMMENTER: Charles Wenger, Poultry Grower

RESPONSE: It is recognized that the poultry growers' records are obtained at the annual inspection and that this information can be requested at any time under the current requirements. The proposed recordkeeping requirements will provide additional information which DEQ would need to investigate a field specific situation such as land application records, crop yields and crop history, which would not be recorded and maintained by the poultry grower. The end-user would be required to maintain the records on-site, there are no reporting requirements for the end-user that is covered under the technical regulations/ requirements. *No changes are being proposed to address this comment.*

**SC-11 SUBJECT: TECHNICAL REQUIREMENTS - STORAGE**

COMMENT: The waste management and storage requirements at 9VAC25-630-80 are especially important. The mandates that waste stockpiled outside for more than 14 days be covered and that all such waste be segregated from surface and groundwater are especially important. Also, the limit on application to 1.5 tons every 3 years unless soil samples have been taken is important. We can testify from first-hand knowledge that piles of poultry waste are sometimes left in place on the land and uncovered for very long periods and this condition often leads directly to water pollution discharges.

COMMENTER: David Sligh, Upper James Riverkeeper - James River Association

RESPONSE: DEQ acknowledges the support. *No changes are being proposed to address this comment.*

**SC-12 SUBJECT: TECHNICAL REQUIREMENTS - RIGHT OF ENTRY**

COMMENT: As a Legislator, I know and we look at the State code you can't just assume things; you have to mean what you say and say what you mean and it says to allow DEQ right of entry for inspection to me that technically gives the government the authority to show up at your door and say we are here for inspection without giving the farmer the opportunity to make sure that all records are in place. It seems like just by adding the language that they must give prior notice would be just a small addition, I think that would alleviate a lot of concerns that end users may have knowing that the government can say we want to do an inspection, let's set up a time when it's convenient give you a chance to get all your records in order; but the way it's worded now technically some one from the DEQ could show up at your door and demand inspection and that's the way it's worded and you [staff] may say that wouldn't happen but that is the way it's worded.

COMMENTER: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

COMMENT: Many [end users] will not want to be open for DEQ inspection just because they used poultry litter.

COMMENTER: William Cole, Amelia County Poultry Grower

COMMENT: This should say "for cause". You have to have a good reason to go on that person's farm and you should not have to announce.

COMMENTER: Matt Long

COMMENT: Give at least 24 hours notice.

COMMENTER: Mark Deavers - Poultry Waste Broker

COMMENT: Directors expressed discomfort regarding regulators being able to access producers' property anytime.

COMMENTER: Robert Runkle, Chairman - Culpeper Soil and Water Conservation District

RESPONSE: The proposed amendments included language regarding right of entry that was added to sections 9VAC25-630-60, 9VAC25-630-70 and 9VAC25-630-80 (the technical regulation sections).

This standard language reads: Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation. The proposed amendment language simply clarifies the authority granted to DEQ in State Water Control Law. *No changes are being proposed to address this comment.*

**SC-13 SUBJECT: SUPPORT FOR TECHNICAL REQUIREMENTS**

COMMENT: The concept of "end-users" following "technical requirements" concerning the storage and application of poultry waste is a much preferred method over a more burdensome permitting process. The continued use of the fact sheet to explain those requirements is also preferred.

COMMENTER: Todd Haymore, Commissioner - VDACS

COMMENT: If change is necessary, we do prefer it be done in technical revisions and not require a permit.

COMMENTER: Rick Shiflet, Land Use Committee - Augusta County Farm Bureau Federation

COMMENT: Tyson supports the use of a general permits system to promote agricultural production while protecting our valuable natural resources.

COMMENTER: Jamie Burr - Tyson Foods, Inc.

COMMENT: We strongly support:



1. the requirement for a site map showing where waste is applied
2. the maximum application rates in section 9VAC 25-630-80 for utilization of transferred waste

COMMENTER(S): Don Sims, Float Fisherman of Virginia

Bill Tanger, Friends of the Rivers of Virginia

COMMENT: If change is necessary, the technical revisions proposed are more acceptable to the end user and broker than the permit process.

COMMENTER: Headwaters Soil and Water Conservation District - Land Use Committee

COMMENT: Support the following provisions:

1. utilizing technical requirements, rather than requiring coverage under a permit;
2. incorporating the requirements into the existing "Fact Sheet";
3. allowing end-users to maintain, rather than requiring them to report, records;
4. not requiring end-users to register with or file paperwork with DEQ;
5. providing a menu of options for land application of poultry litter rather than a one-size-fits-all approach;

COMMENTER(S): Katie K. Frazier, Vice President - Public Affairs

Hobey Baughan, President - Virginia Poultry Federation

Roger Hatcher, President - Cumberland County Farm Bureau

COMMENT: A variety of options for end users and application rates of poultry litter rather than mandating one solution. These options must include all of the following: proper removal rates in certain applications; a standard rate of limit application once every three years when no soil analysis has been taken, applications supporting the soil test recommendations in certain circumstances or a nutrient entrant plan that's been provided by a certified development nutrient planner.

COMMENTER(S): Katie K. Frazier, Vice President - Public Affairs

COMMENT: Support the following provisions:

1. strengthening accounting of litter transfers by enabling DEQ to collect additional information about where litter is utilized;
2. strengthening accountability of poultry litter brokers and haulers through their registration with the agency.

COMMENTER(S): Hobey Baughan, President - Virginia Poultry Federation

Roger Hatcher, President - Cumberland County Farm Bureau

COMMENT: I encourage the DEQ to stick by its proposed limits of 1.5 tons of litter every 3 years and for the proposals to cover end-users using 5 tons or more of material.

COMMENTER: Kent Sensenig

COMMENT: The following proposal, I find to be reasonable, incorporating these requirements for application into the fact sheet.

COMMENTER: Lareth May, Poultry Grower

RESPONSE: DEQ acknowledges support for the concepts included in the proposed regulation. *No changes are being proposed to address this comment.*

COMMENT: Education and recordkeeping along with training are preferred to over-regulation.

Monitoring of on-farm records should be sufficient. The need for up to 200' wide buffers on small swales seems excessive.

COMMENTER: Robert Runkle, Chairman - Culpeper Soil and Water Conservation District

RESPONSE: DEQ acknowledges support for the concepts included in the proposed regulation and adds clarification that the proposed regulation includes buffer distances of 100' (without permanent vegetated buffer) or 35' (with permanent vegetated buffer) from surface water courses. *No changes are being proposed to address this comment.*

SC-14 SUBJECT: LITTER ANALYSIS

COMMENT: My concern is that the analysis of poultry litter is required only once in three years. Do we know that this is truly representative of litter being transferred? Having worked extensively with litter transfer records, I have noticed that for growers who analyze more frequently, the litter analysis can differ significantly from one transfer to the next, within a span of 3 years. If the analysis provided to the end-user is not representative of the litter being spread, it could lead to an over- or under-application of

nutrients for the intended crop. I would prefer to see some method of ensuring a representative litter analysis.

COMMENTER: Becky Barlow, Poultry Litter Market Maker

COMMENT: What should be mandatory are chemical analyses of each batch of litter removed, limits imposed on constituents applied, and post application analyses of the soil and surface water and groundwater, where applicable. Poultry litter should be prevented from sale to farms bordering streams unless best management practices, especially buffer zones are implemented.

COMMENTER: Bob Luce

RESPONSE: The current regulation requires the poultry grower to analyze poultry waste a minimum of once every three years for the nutrient content in order to determine appropriate application rates. A copy of the analysis is required to be provided to the recipient of the transferred waste. If the application rate is greater than 1.5 tons per acre every three (3) years, soil samples must be used when determining the application rate. Best management practices, included in the proposed technical regulations and mandatory for all land application sites and are designed to reduce the risk of surface and ground water contamination from nutrients and pathogens. *No changes are being proposed to address this comment.*

COMMENT: Where end users are required to sample poultry wastes and adjust application rates accordingly, it is important that these analyses be accurate. The proposed VPA permit at Part III.A.5. allows that where two or more poultry waste sources are commingled or stored “a sample that best represents the waste shall be used to calculate the nutrients available. . . “We contend that since the characteristics of different wastes may be very different that the only way to accurately assess the nutrient levels that are being applied is to sample and apply each load of waste separately. One sample from one load of waste will not give assurance that application rates are appropriate if that load is then commingled with other loads. DEQ must either devise a protocol under the wording of this permit condition that will truly provide for representative sampling or revise this provision to specify how this goal will be met.

COMMENTER: David Sligh, Upper James Riverkeeper - James River Association

RESPONSE: The compliance strategy is part of implementation guidance that would be developed after any changes to the regulation. Provisions clarifying how commingled poultry waste sources should be sampled would be a component of this guidance. *No changes are being proposed to address this comment.*

#### **SC-15 SUBJECT: ENFORCEMENT/ COMPLIANCE/ MONITORING**

COMMENT: The reality is that the money is not going to be there to enforce all of these regulations as written so to me the common sense approach would be to ease them a little bit so that it wouldn't be nearly the enforcement.

COMMENTER: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

COMMENT: Inspections will be necessary to ensure compliance.

COMMENTER: Penny Manners

COMMENT: We especially strongly support the requirement at 9VAC25-630-30.B.2.b., which provides authorization for brokers and end-users only where their activities will not contravene Water Quality Standards. Despite the specific technical requirements included in the draft regulation, there still exists the potential for violation of Water Quality Standards and this provision withdraws authorization for activities that do so. We assert that follow-up monitoring by DEQ should be conducted at a sampling of sites to ensure that Standards are met where the technical requirements are followed.

COMMENTER: David Sligh, Upper James Riverkeeper - James River Association

COMMENT: A flexible approach to enforcement of these regulations must be guaranteed.

COMMENTER: Katie K. Frazier, Vice President - Public Affairs

COMMENT: A regulation is only as good as its enforcement, and this rule will be particularly difficult to enforce. There should be a practical supplement to the field work of state agency staff. For example, each party subject to this rule should be required to complete an online compliance certification each year. The certification should be in some detail so that the person will know specifically what they should have done when certifying their compliance.

COMMENTER: Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River  
Margaret Lorenz, Friends of the North Fork of the Shenandoah River

RESPONSE: The inspection and compliance/ enforcement strategy is part of implementation guidance that would be developed after any changes to the regulation. DEQ acknowledges the suggestion. *No changes are being proposed to address this comment.*

COMMENT: Because land application sites may contribute pathogens to nearby waters and many streams are already impaired for bacterial pollution, it would be inappropriate and illegal to permit new applications that would contribute to those existing violations. We are concerned that this situation is not adequately addressed and request that DEQ conduct follow-up investigations to determine whether these permitted activities are causing increased human health risks.

COMMENTER: David Sligh, Upper James Riverkeeper - James River Association

RESPONSE: The inspection strategy is part of implementation guidance that would be developed after any changes to the regulation. In addition, DEQ staff in each of the regional offices collects water samples on a routine schedule at many locations across the Commonwealth. These water samples are shipped to a state laboratory for chemical and bacterial tests. The samples are tested for levels of nutrients, solids, bacteria associated with human and animal wastes, toxic metals, some pesticides and harmful organic compounds. If a water quality impact, or other environmental harm such as a fish kill, is found to have been directly caused by a specific pollutant management activity, the permit holder (or regulated broker or end-user) would be held accountable if the regulatory requirements were not followed. *No changes are being proposed to address this comment.*

#### **SC-16 SUBJECT: BROKER REQUIREMENTS**

COMMENT: Regulation of the broker and hauler/ spreader seems to us to be far more important than regulation of the end-user. A formal certification process for the hauler/ spreader should be considered.

COMMENTER: Robert Runkle, Chairman - Culpeper Soil and Water Conservation District

RESPONSE: The proposed amendments include requirements that must be adhered to by the broker and end-user of poultry waste when stored and land applied. DEQ acknowledges the suggestion. *No changes are being proposed to address this comment.*

COMMENT: Registering of the brokers and requiring them to keep and submit hauling records, my understanding is there have been instances in the past where the brokers have not submitted there records which is cause these problem, so I find this to be reasonable.

COMMENTER: Lareth May, Poultry Grower

Mark Deavers - Poultry Waste Broker

RESPONSE: DEQ acknowledges support for the concepts included in the proposed regulation. *No changes are being proposed to address this comment.*

COMMENT: Opposed to additional recordkeeping.

COMMENTER: Mark Deavers - Poultry Waste Broker

RESPONSE: The proposed recordkeeping requirements will provide additional information which DEQ would need to investigate field specific situations. The end-user would be required to maintain the records on-site, there are no reporting requirements for the end-user that is covered under the technical regulations/ requirements. The recordkeeping requirement related to which method is used to determine the land application rate was proposed in order to facilitate in determining and quantifying nutrient reductions. It was determined that this information will not provide the agency with conclusive data to determine actual nutrient reduction, so it is not necessary to require the information to be recorded. *The recordkeeping item has been removed from the final amendments.*

#### **SC-17 SUBJECT: EDUCATION AND OUTREACH**

COMMENT: We support the required training programs for all poultry end users.

COMMENTER(S): Don Sims, Float Fisherman of Virginia; Bill Tanger, Friends of the Rivers of Virginia

RESPONSE: The proposed amendments include an additional training requirement for the (permitted) poultry grower and poultry waste broker. Training is only required for the end-user if they obtain coverage under the general permit. As long as the end-user adheres to the requirements in sections

9VAC25-630-70 and 9VAC25-630-80 they will not be required to obtain coverage under the general permit. *No changes are being proposed to address this comment.*

COMMENT: The need for coordinated outreach and education to the impacted industries was highlighted by farmers and the public who attended the hearings. There is a need to commit time and resources to develop simple guidelines and other materials to explain what the new requirements are for poultry growers, brokers and end-users.

COMMENTER: Katie K. Frazier, Vice President - Public Affairs

COMMENT: The final rule should clarify that any and all persons involved in poultry waste management on behalf of a company or farm must be trained.

COMMENTER: Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River  
Margaret Lorenz, Friends of the North Fork of the Shenandoah River

COMMENT: The regulations need to be accompanied by an outreach and education effort, preferably conducted in partnership with agricultural organizations, to ensure poultry growers, brokers, and end-users are familiar with the new requirements.

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

RESPONSE: DEQ staff intends to work with the industry and agricultural organizations to provide education and outreach to the grower, broker and end-users regarding the final amendments. These efforts have been ongoing throughout this regulatory action. *No changes are being proposed to address this comment.*

**SC-18 SUBJECT: PERIODIC REVIEW OF REGULATION**

COMMENT: We are aware that soils on some farm land where poultry waste may be applied already contain a surplus of phosphorous and that *any* application to these sites will be inappropriate and may contribute to Standards violations. Clearly, applications to such lands may occur in those cases where soil sampling is not required. We assert that DEQ must perform some study to assess the extent to which such situations occur and, if necessary, make amendments to the regulation to address these problems.

COMMENTER: David Sligh, Upper James Riverkeeper - James River Association

RESPONSE: DEQ conducts a periodic review of regulations to determine if revision is necessary, and this is an example of an issue that would be considered in the regular review process. *No changes are being proposed to address this comment.*

*Table 1:*

Assateague Coastkeeper	Lower Susquehanna Riverkeeper
Audobon Naturalist Society	Lynnhaven River NOW
Blackwater Nottoway Riverkeeper Program	Mark Kovach Fishing Services
Blue Ridge Environmental Defense League	Massanutten Chapter of Trout Unlimited
Blue Ridge River Runners	Mid Atlantic Paddlers Association
Chesapeake Bay Foundation	Mossy Creek Flyfishing Shop & Outfitting Service
Civil & Environmental Services, LLC	National Committee for the New River
Clean Valley Council	Northern VA Trout Unlimited
Clean Water Action	Occoquan Watershed Coalition
Coastal Conservation Association Virginia	Patuxent Riverkeeper
Dan River Basin Association	Poquoson Citizens for the Environment
Downriver Canoe Company	Potomac Conservancy
Eastern Blue Ridge Fly Fishers	Potomac Riverkeeper
Environment Virginia	Preserve Frederick
Falmouth Flats Fly Fishers	Rainwater Management Solutions
Float Fisherman of Virginia	Rapidan Chapter of Trout Unlimited
Friends of Accotink Creek	Rivanna Conservation Society
Friends of Bryan Park	Sassafras Riverkeeper
Friends of Dyke Marsh	Scandia USA LiveGreen
Friends of James River Park	Shenandoah Riverkeeper

Friends of Stafford Creek	Shenandoah Valley Network
Friends of the New River	The Nature Conservancy
Friends of the North Fork of the Shenandoah River	Twin River Outfitters
Friends of the Rappahanock	Virginia Association of Biological Farming
Friends of the Rivers of Virginia	Virginia Chapter-Sierra Club
Friends of the Roanoke River	Virginia Conservation Network
Hands Across the Lake	Virginia Council of Trout Unlimited
James River Association	Virginia Eastern Shorekeeper
James River Fishing School	Virginia League of Conservation Voters
Ken Pendrod's Life Outdoors Unlimited	Winchester Trout Unlimited
Lands and Water	York County Waterways Alliance
Ms. Karie Walker	Mr. Odelle Robertson, Jr.

*Table 2: Chesapeake Bay Foundation Member Commenters*

Dorothy Abbott	Mrs. Dana Adams	Ms. Nancy Alexander	Jennifer Alexander
Cynthia Alksne	Ms. Vickie Allen	Mr. Dean Amel	Lawrence Amos
Dr. Eric Anderson	Ms. Frances Hartnett Angara	Kirk Barley	Mr. Joseph Barnoski
Mr. Carroll Barrett	Mr. Martin Baskin	Ms. Jen Beach	Mrs. Elizabeth-Reid Becker
Mr. John Belz	Jerry Benson	Nancy Berger	Mrs. Simona Bergman
Dr. Walter Beverly	Ms. Amy Biggs	Mrs. Bonnie Bilski	Ms. Mary Blackwell
Ms. Marilynne Blair	Ms. Nancy Bland	John Borgard	Mr. J Spotswood Bowyer
Ms. Elizabeth Bradbury	Mrs. Claire Branson	Mr. Brandon Briggs	Mrs. Judith Bryan
Ms. Gale Bryant	Mr. John Bryant	Mr. David Buchanan	Paul Burke - Journey Home
Ms. Sharon Burtner	Ava Butcher	Heather Buysse	Mrs. Bethany Cardone
Mr. Mark Caren	Jeannie Carlin	Mr. George Carneal	Ms. Kristin Carter
Ms. Lisa Chernoff	Mr. James Civitarese	Ms. Lorelee Clark	Mr. Andrew Cohen
Elisabeth Collins	Mr. Christian Cool	Bettie Cooper	Ms. Jeanne Corbin
Harriet Covey	Ms. Donna Cowling	Ms. Suzanne Cranford	Ms. Susan Crawford
Mr. Daniel Creedon	Mr. John Critchfield	Ms. Wanda Crockett	Ms. Roberta Curtis
Terri Cuthriell	Mr. David Dabay	Mrs. Marian Dabay	Alissa D'Auria
Ms. Ashley Davis	Mr. Robert M. Dawson	Mr. Edward C Deerfield	Mr. James Deppe
Mrs. Laura Diamantopoulos	Mr. Brian Dick	Mrs. Allison Dickens	Justin Dooley
Mr. Ralph Eaton	Mr. Ted Ellett	Blair Ellson	Brian Emerson
Mrs. Elizabeth Ende	Mrs. Gloria Engle	Ms. Janice Everett	Mr. James Ewan
Ms. Kay Ferguson	Mrs. Mary Lou Ferralli	Mr. Jason Fincham	Mr. Bill Fisher
Janice Flanders	Mr. Warren Fleischer	Dr. Robert Foos	Ariele Foster
Mrs. Katherine Fountaine	Ms. Alyssa Freeman	Sally Frodge	Ms. Nuala Galbari
Brian Gallagher	Mr. Edward Gibbs	Mr. Ken Gigliello	Ann Gordon
Sarah Graves	Ms. Ellen Gray	Ms. Dee Grimm	Craig Grube
Charles Gumas	Dr. Doreen Gumas	Mr. Jason H	Judith Hall
Gail Hallett Cousin	Mr. David Hannigan	Ms. Dana Harrison	Miss Tiffany Harville
Ms. Mary Ann Haske	Hank Helmen	Mr. Mark Henein	Mr. Robert Henenlotter
Dr. Richard Henshaw	Mr. Chet Hepburn	Ms. Mary Hill	Ms. Dianne Hinch
Mr. Ted Hochstadt	Ms. Lilli Hoffman	Ms. Kimberly Honeycutt	Dana Horton
Ms. Helen C. Horton	Ms. Karin Houston	Mrs. Sandra Howson	Sarina Hrubesch
Dr. Sophia Hughes	Mr. Zach Hurst	Mr. Henry Ickes	Mr. Robert Irvine
Patricia Isaacs	Mr. Douglas Jaslow	J.D. Jeffrey	Ms. Cheryl Johnson
David Jones	Dr. Sean K	Ms. Norma Kacen	Dr. Amit Kaldate
Mr. Michael Kennedy	Dr. Michael-David Kerns	Ms. Sharon Keys	Ms. Allison Kiehl
Ms. Sheila Kilpatrick	Mr. Mike King	Ms. Caroline Klam	Mr. Edward Knight
Margaret Koetsch	Kirsten Krivoshia	Mr. John Lander	Mr. Chris LaPlante

Audrey Lassiter	Mr. George Berton Latamore	Mr. Tom Layman	Mr. Ray Legge
Mr. Robert Leggett	Ms. Jessica LeTourneau	Mr. Patricia Ann Liske	Dr. Christine Llewellyn
Mrs. Barbara Lotterer	Miss Kathleen Luisa	Mr. Matthew Luxford	Mr. Charles Maddox
Mr. Edmond Marroni	Mr. Christopher Mawdsley	Joe McCue	Joe McCue
Thad McDonald	Ms. Kimberly McDonald	Ms. Mary Ann McFarland	Mr. Thomas McGarry
Mark McKenzie	Beth McKenzie-Mohr	Ms. Ashby McNeil	Mr. Philip Melillo
Mr. Charles Metzgar	Mrs. Nina Michael	Jennifer Michaelree	Miss Lucy Midelfort
Mr. Christopher Millard	Mrs. Betty Milligan	Ms. Irene Mills	Ms. Frannie Monasterio
Dr. Brian Moores	Andrea Moran	Edi Morris	Mr. Paul Morrisette
Mr. Brion Morrison	Mr. Dennis Motsko	Mr. Andrew Mueller	Mr. Carlos Munoz
John Ndiritu	Mr. Tom Nelson	Miss Jennifer Norman	Rev. Timothy O'Connell
Mrs. Kathy Oxtan-Villemuer	Mrs. Jennifer Ozawa	Dr. Thomas Pakurar	Ms. Susan Pederson
Mr. Lance Pedigo	Mr. James Peterson	Mr. George Phillips	Dr. Mary Picardi
St. George Pinckney	Katherine Podlewski	Michael Potashnik	Susie Powell
Tod Preston	Christine Putnam	Monica Quade	Dr. John Ragosta
Ms. Felicia Rakes	Ms. Annette Ramos	Megan Reardon	Ms. Sherley Redding
Dr. Jeannette Regetz	Ms. Peggy Reinburg	John Reiter	Dr. Richard Renfield
Ken Ricklin	Scott Riley	Laura Robertson	Joseph Roop
Mr. Mike Rosenberg	Mr. Gavin Sampey	Mr. Enrique Sanchez-Armass	Ms. Rosemarie Sawdon
Mr. Edward Scerbo	Mr. Donald Scheu	Mr. Tim Schmitt	Mr. Milton Schultz
Mrs. Betty Scott	Mr. Russell Scott	Mr. Jimmy Shaffer	Michael Shaner
Mr. David Shantz	Mr. James Shelton	John Short	Mrs. Cheryl Sidwell
Ms. Therese Silberman	Sarah Sinsabaugh	Mr. Mark Skolnick	Mr. Hunter Sledd
Kathy Smart	Ms. Sharon Smith	M. Soltis	Dr. Danny Song
Jennifer Spaine	Mrs. Kathryn Squires	Ms. Sara Stewart	Jeffrey Stoltzfus
Mr. Adam Strasel	Ms. Marjorie Streeter	Georgia Strentz	Mr. Mike Supan
Ms. Kathleen Taimi	Ms. Jerrie Thornton	Ms. DeeDee Tostanoski	Mr. James Townsend
Paul Toxie	Randie Trestrail	Brian Turner	Carol Tyrer
Larry Uman	Mr. Howard Urbach	Mr. Joseph Valentine	Derek Venable
Ms. Linda Vesey	Mrs. Patricia VonOhlen	E. W. Waggener	Susan Wagner
Ms. Jan Ward	Mr. Paul Ward	Ms. Carol Warren	Mr. Alistair Wearmouth
Georgia Weatherhead	Suzanne Wheatley	Kristin White	Lynda Whitehead
Mr. John Whitelaw	Ms. Barbara Williams	Mr. Robert Williamson	Ms. Randi Wortham
Edward Wrobel	Ms. Brenda Yu	Mr. Paul Zahn	

*Table 3:*

Bob Abrams	Aubrey Ansell	Hunter Armstrong	Rob Arner
Justin Ball	Kirk Barley	Sean Michael Beaver	David Bernard
Dave Beverly	Linda Bodycomb	Tom Boyd	Darwin S. Braden
Eileen Brennan-Porter	Darryl Brewer	Timothy Bromelkamp	Henry Bruhl
Jim Bullard	Gain Bunten	L.J. Campbell	Chris Cannon
David Cartier	Nancy Cawood	Larry Chewning	George Church
Matt Church	Alex Clarke	Audrey Clement	Rich Coffman
Blake Condo	Bo Crowder	Grover E Czech	Douglas Dalgarn
Dan Davala	Melody Davala	Dee David	Samuel Davis
Janet L. Day	Frank & Denise Dertzbaugh	Terry DeSeta	Ray Dewar
Bob Dickinson	Larry DiJoseph	Lawrence DiJoseph	Dennis Dineen
G.C. Duck	Peter Dula	Thomas Ehrhard	Nick Elgas
Michael Estes	Daniel Fannon	Greg Feder	Herschel Finch
Thomas Fore	Art Friedlander	Bradley M. Gates	Christian Goebel

Christine Goepp	Lee Goldman	Greg Golliday	Lee Good
Maston Gray	Lyall Griffin	Tom Griffin	Timothy Griffith
B. Frank Hale	Ridgway M. Hall, Jr.	Trey Hampshire	James Hanson
Jeremy Hartman	Denise Hayes	Scott Hendricks	Joseph Hepp
Tim Hertzler	Patricia Hilgard	Patricia Hine	Sean Hoffman
Ted Hoppock	James Horton	Chad Hudson	Mitchell Humphreys
Lou Janesko	Thomas Jenkins	James John	Dave Jones
Robert Jordan	David Kaeuper	Jeff Kelble	Scott Kish
Scott Koehn	Valdean Langeburg	Phillip Latasa	Bryan Lewis
John Lipetz	Nathan Lott	Charlie Loudermilk	John Mathwin
Steve McNulty	Dave Menton	Cindy Meranda	Ed Merrifield
Ashby Miller	Rick Miller	Anna Mitchell	Jesse Moore
John Moser	Andrew D Mueller	Michael Mulloy	Mark Myers
James Nashed	Charles Newton	Mike O'Neill	Dan Owen
George & Pam Patterson	Alec Peltier	Peter Pfotenhauer	Tony Pitale
Boyd Post	Mark Pullen	Dan Purdom	Brian Randolph
L.E. Rhodes	Duane Richards	Brian Risi	Teresa Rodriguez
Ed Runnion	Bob Runnion	William E Savage, Jr	Douglas Seabright
Phyllis Shelton	Jay Sheppar	Larry Sigmon	Rick Siira
John Sites	Nick Smith	George Sorvalis	Cara Sottosanti
Francis Steinbauer	Wesley Stien	Ned Stone	Erik Thompson
Mac Thornton	Dan Tillery	John Tipton	Jesse John Tolliver
Marianne Tolliver	Ronald Uleck	Jonathan Uston	Raymond Vaughan
Derek Venable	Donald Walter	Jan Ward	Scott Warholic
Susan Wilensky	Brian Williams	Patricia Williams	Mark Wimbish
James Darrell Woolridge	Mark Zimmerman		

*Table 4:*

Julie Blake	Todd Blake	Paul Neil Brooks	Clinton Carter
Tom Denny	Andrew Edds	Brian M. Haverlick	T.J. Humes
Andy Mack	Jay Maizel	Corey McConville	Trey Metz
Bill & Avis Moore	Aaron Otte	Tom Scanlan	William Sponaugle
Larry Tumblin	Scott Viera	Peter Weyrens	Jean White

*Table 5:*

Tim Akers	Bryan Bowman	Eileen Brennan-Porter	Marion Cooper
Kevin Daniels	Frank Filipy	Robert Greenlee	Galen hart
Jeremy Hartman	Latiffa Kerbal	Jesse Maines	Justin Marney
Dave Menton	Wendell Moseley	George Paine	Wes Porter
Brian Randolph	Rapidan Chapter Trout Unlimited	Andrew Riccobono	Joel Scalzo
Larry Sigmon	Charles Snodgrass	Rob Sticinski	Jack Train
Janice Zhuang			

*Table 6:*

Rob Arner	Jay Cohen	Anne Dahmer	Frank Filipy
Chapman Frazier	Michael Harmon	Amy Holstein	Robin Hoofnagle
Doug Jackson	Norma Kawecki	Laurie Kent	Stephen Lipps
Shannon Mahoney	Michael Mulloy	Camille Nelson	Charles Newton
Stan Oaks	Joe O'Kane	Pamela Park	Catherine Peltier
Steve Pilkerton	Scott Plein	Wes Porter	Robert Rosenthal
Larry Sigmon	Vince Staley	William Stein	Rhea Topping
Mark Wimbish	Barbara Woodward	Marcia Woolman	Nettie Zappala